United States Court of Appeals

for the Second Circuit

APPENDIX

74-2591

United States Court of Appeals
for the Second Circuit

74-2591

ALBERT KAUFMANN,

Plaintiff-Appellant,

against

MARY WELLS LAWRENCE, CHARLES MOSS, RICHARD T. O'REILLY, JOHN V. BURNS, FRANK G. COLNAR, FREDERICK L. JACOBS, BARRY E. LOUGHRANE, MARTIN STERN, STANLEY G. DRAGOTI, CATHARINE GIBSON, E. DONALD CHALLIS and WELLS, RICH, GREENE, INC.,

Defendants-Appellees,

and

WARREN J. KRATKY, ARNOLD M. GRANT, TROY V. POST and EMILIO PUCCI,

Defendants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

JOINT APPENDIX—PART I
VOLUME II

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ALFRED KAUFMANN, Plaintiff	vs.	74 Civ. 5081
MARY WELLS LAWRENCE, et al. Defendant.		

New York, New York.
November 25, 1974 - 9:45 A.M.
Room 128

Before:

HONORABLE ROPERT L. CARTER, District Judge.

APPEARANCES:

NEMSER & NEMSER, ESQS.,
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AMELYA L. KEARSE, ESQ., and
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DONOVAN, LEISURE, NEWTON & IRVINE, ESQS.,
Attorneys for White, Weld & Co., a subpoenaed witness
M. LAUCK WALTON, ESQ., and
ROBER V. PUGH, ESQ., of Counsel.

MR. S. NEMSER: Your Honor, before plaintiff commences its argument and evidence in this proceeding --

THE COURT: I am not too sure that I am interested in argument. I have read the papers.

MR. S. NEMSER: Yes, your Honor. But we have a few housekeeping matters, if we may.

THE COURT: All right. But they were part of my weekend pleasures and I am not sure that I want to hear argument. I want to hear, if you have some evidentiary proof, I am interested in that.

MR. S. NEMSER: We do. But before we get to that, if your Honor please, there are housekeeping matters.

Plaintiff requested the defendants to produce certain additional documents and all the documents requested ~~in~~ that we thought to press, everybody produced except that there are two items of documents which plaintiff recognizes would require confidential treatment, and we would consent to the in camera treatment of those documents.

There would also be a matter, if there is any testimony in relation to those, that we would request your Honor, both sides, that is, that be given also in camera treatment because it deals with projections.

THE COURT: Isn't this case, as I understand your point, that you are alleging a ~~10B~~ 10(b) violation?

MR. S. NEMSER: And ~~14B~~ 14(e), your Honor.

THE COURT: All right. Because of material misrepresentations of one sort or another. Although I gather that the real thrust of the complaint, or am I wrong, is concern about the fact that this company is moving from a publicly-held company to private? I am not sure I am interested in that. I am not sure, that no matter what my own personal feelings may be about that, I am not sure that that is a matter which is of concern to the Court, whether the company goes from a publicy-held company to a private one.

I would think that therefore, since as I read your papers that that is the real thrust of what you allege as being the harm to the plaintiff, then I would hope that you would develop that.

MR. S. NEMSER: Yes, your Honor. And I would say that with respect to our claims, it goes deeper than the matter of misrepresentation and omissions in the prospectus.

THE COURT: All right.

MR. S. NEMSER: We are claiming that there is a fraudulent scheme and device enmeshed with these misrepresentations which permeate the entire thrust to force the public --

THE COURT: To force the public out, to get control, and run the company privately without accountability to the SEC?

MR. S. NEMSER: And also to aggrandize themselves by carving out at an unfair price that portion of the equity that really belongs to these public investors. So that he is a total complex of facts in this total, what we call, grand fraud.

THE COURT: As both sides are probably aware, this Court, last Thursday, in a case that is at least superficially similar to yours, that is, on an apparent misrepresentation, in a company going from publicly held to private company, issued an injunction.

How close this case is to that, I don't know.

MR. S. NEMSER: Your Honor, I would say I gather your Honor is referring to Judge Cannella's decision.

THE COURT: That is right.

MR. S. NEMSER: In Broder v. Dane. We will establish here today, your Honor, that one of the early omissions is precisely the same type of omission that was involved there.

THE COURT: All right. I think, since I have given you time to in fact make an opening statement, I

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ought to allow -- who is it going to be?

MR. SISK: Robert Sisk, your Honor, on behalf of the defendants who have been served in opposition to the motion.

Our position very briefly is the motion should be denied. This plaintiff holds 100 shares which he bought last March at $9 a share. It is in the wrong court, at the wrong time, seeking the wrong relief on the wrong factual basis.

We say he is in the wrong court, your Honor, because there isn't any Federal Securities violation here. This court would not have jurisdiction, in our view, of a straight fraud matter unless there was something fraudulent in the prospectus, and we say there isn't anything fraudulent in any of the papers which have been filed with the SEC.

Indeed, my corporate partners and the others at Donovan, Leisure who drew the papers ought to be complimented because so much of the complaint here was taken straight out of the prospectus. It sounds like a rehash of the prospectus.

We say he is here at the wrong time because, your Honor, this matter has been one of public notice since September 4. The red herring prospectus was filed on

October 4. The final prospectus on November 4th, and no action by the plaintiff until last week, Tuesday, and we didn't see the motion papers until Wednesday night.

We say he is seeking the wrong relief because there is no pleading in the complaint that the plaintiff lacks an adequate remedy at law, and the fact is his claim is for dollar damages.

He has ~~not~~ a $900 ~~stage~~ stake in Wells, Rich & Greene, and his expert claims that it is worth $20 a share. That would give him a $2000 claim. And if he is right and he proves it to your Honor after a trial, your Honor can award him the $1100 difference in damages that would make him whole.

We of course don't think he is right.

But there is no irreparable injury, and Judge Frankel last week, in a case which we think is even closer to this one, denied injunctive relief because of the failure of the plaintiff to establish irreparable injury.

THE COURT: I have read that in your papers. I must tell you that I am not very much persuaded by that argument. I don't think this case is, at least in terms of its theoretical underpinnings, at all close to Judge Frankel's case because, if I understand what the plaintiff is pleading in this case, or attempting to indicate, is that this is an attempt not only to deprive him of money, but

this is an attempt to in fact defraud the public.

And under those circumstances it seems to me that the case is not one where money damages would be sufficient to make him whole.

I have read that. I think that it is not something I find persuasive at all. I don't know whether he can prove his case. But if his theory is correct, then it would appear to me that your argument doesn't have much substance.

MR. SISK: If your Honor by referring to the public refers to stockholders other than plaintiff, that means the plaintiff would have to establish that he is genuinely a true class representative.

THE COURT: He hasn't established anything.

MR. SISK: And of course that issue is not before your Honor today. But I might say parenthetically that he is wrong also on his claim on the class determination.

We gave your Honor, over the weekend, affidavits that would show 600,000 shares opposed to the granting of the motion for preliminary injunction. It is our position that at the very least that establishes that this plaintiff has a disabling conflict of interest.

There is an enormous group of stockholders who want this exchange offer to go forward.

Of course, your Honor, even if he were later to be found to represent a smaller class, a sub-class, he would have an opportunity to prove to your Honor that that sub-class would be entitled to dollar damages, just as Mr. Kaufman might be entitled to dollar damages after he proves his case, if he can prove his case to the Court.

And finally, your Honor, we say he is here on the wrong factual basis. The complaint was premised largely as I read it on SEC Commissioner Somer's speech in an unofficial capacity in the Notre Dame Law School. Mr. Sommer made it clear he wasn't speaking for the SEC. He said in a footnote to Page 1 of his speech the SEC disclaims responsibility for any private publication or speech by any of its members or employees.

"The views expressed here are my own and do not necessarily reflect the views of the Commission or of my fellow commissioners."

Of course we have also given your Honor an affidavit of my partner Orville Schell, reciting his meeting with the chairman of the SEC and Mr. Sommer in which the chairman of the SEC confirmed that Mr.Sommer was speaking only for himself.

THE COURT: You can be sure that everything you gave me I have read.

MR. SISK: Your Honor, even if Mr. Sommer's views were to be of any interest to the Court, I should point out one very important thing, and that is that Mr. Sommer says that compelling business circumstances would justify, in his view, or could justify in his view, this kind of offer.

It is our view that when you have heard the testimony today you will find that there was compelling, overwhelmingly compelling business justification for the offer.

So, in essence, your Honor, we say this plaintiff has a heavy burden of proof. He has got to prove not only probable success at trial ~~and~~ but also irreparable injury.

We are pleased that he has asked for witnesses from the company. But I point out to your Honor that there is quite a list. He has asked for not only Mrs. Lawrence, who is here in court, but also two other Wells, Rich, Greene executives, one from White, Weld, and I am a little concerned with the clock ticking, your Honor, with the 5:00 P.M. deadline today. I hope that your Honor will see to it that Mr. Nemser proceeds expeditiously.

THE COURT: All right.

MR. S.NEMSER: Your Honor, may I just make two remarks in response.

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THE COURT: No, I don't want to hear any more argument. The point is that I know both of your positions and I hadn't intended to hear either one of you because I have read the papers. But since I gave you time, I thought the best thing for me to do was to hear from Mr. Sisk.

All right, let's proceed.

MR. S. NEMSER: Your Honor, in order to expedite the hearing, we have prepared a list of plaintiff's exhibits for introduction into evidence. I supplied Mr. Sisk with the list and the documents this morning. These are primarily documents which were part of the affidavits. There are three additional documents. Two are press releases and one is the tombstone ad of the notice.

And what we have done, your Honor, we have tabbed to the left my affidavit number and then in the middle the PX1, etc., which is the hearing exhibit number.

THE COURT: All right.

MR. S. NEMSER: And I understand, Mr. Sisk, that there is no objection to these going into evidence?

MR. SISK: That is correct.

MR. S. NEMSER: Incidentally, your Honor, I might indicate that to expedite, we have put a PX exhibit over here and they can be marked later.

THE COURT: All right.

MR. S. NEMSER: Those will be the ones to be marked. Your Honor, I would like to hand you a set of these to facilitate your following the testimony.

THE COURT: All right. Thank you.

MR. S. NEMSER: I call Mr. Belfer.

N A T H A N B E L F E R, called as a witness by the plaintiff, having been first duly sworn, was examined and testified as follows:

MR. S. NEMSER: Your Honor, Mr.Belfer is an investment analyst, an economist, and he submitted an affidavit, which will form part of the moving papers.

May I ask your Honor or opposing counsel whether they want to question Mr.Belfer on his qualifications?

THE COURT: I think, Mr. Nemser, that it is your case and your witness. If you want to establish that he has the qualifications, it is your responsibility.

DIRECT EXAMINATION

BY MR. S. NEMSER:

Q Will you state your qualifications for the record?

A I am a graduate of Harvard University, with a Bachelor of Science degree in economics. I also have

a Master of Arts and a Ph.D. from Harvard. In economics.

I have taught economics at Tufts College, M.I.T., Brooklyn College, Johns Hopkins and Penn State University.

I have written numerous articles in the field of finance, economics, investment and business administration in various business and economics and financial publications.

I am a member of the New York Society of Security Analysts, and I am also a chartered financial analyst.

I have been associated with the Standard Research Consultants, a subsidiary of Standard & Poor's, Kuhn, Loeb & Company, and DeVegh & Company.

I am currently vice-president, a vice-president at Wood, Struthers & Winthrop, and I am also a vice-president of the DeVegh Mutual Fund.

I have done many security valuations, studies of stocks and bonds and warrants, including reorganization and recapitalization plans and valuations of companies planning to merge.

THE COURT: Mr. Nemser, I think the better way to proceed -- there is a lectern there, if you go back there, then you will be sure that you hear and Mr.Sisk

will hear what is going on.

MR. S. NEMSER: Your Honor, I submit that this develops the qualifications, and subject to any voir dire questioning by opposing counsel I request a ruling that he is qualified to testify in this proceeding as an expert.

THE COURT: An expert in what?

MR. S. NEMSER: In valuation of securities, and particularly the valuation of the common stock, in this instance of the Wells, Rich, Greene, Inc.

THE COURT: All right. Mr. Sisk. Do you object?

MR. SISK: Your Honor, I have a basic objection to the entire line of questioning of the witness on the subject of value. If I understand what this case is about, it is a claim of violation of ~~10B(5)~~ 10(b)-5 and ~~14E~~ 14(e) I don't see how value plays any role in this. And so I object to the whole line of questioning.

MR. S. NEMSER: Your Honor, we consider that one of the basic parts of the fraud involved here and as part of the squeeze out and the ~~scheme~~ scheme of the forced sale is to force the public stockholders to sell their stock back to the company at a price which is below fair value and the twelve directors as part of this scheme would then carve out that part of the equity and of the earnings which rightfully belong to these public stockholders for their

own aggrandizement.

THE COURT: All right. If that is the only objection, then the objection is overruled. He can testify. Proceed.

Q Mr.Belfer, have you made a valuation analysis of the business and financial operations of Wells, Rich, Greene in connection with the ~~change over?~~ Exchange Offer?

A I have.

Q Will you tell the Court what conclusions, if any, you have reached based on your valuation analysis?

A Well, the value of the offer, based on the price ~~in~~ in the when-issued market of the bond is approximately $8.52 a share.

THE COURT: Mr.Belfer, that is not going to help me very much. I would like to know, I want to be enlightened on this, I would like to know how you went about establishing value, what you utilized, and before you get to your conclusions. And then tell me what your conclusions are.

Q Would you answer his Honor's question?

A Well, I have made an analysis of the operations of Wells, Rich & Greene for the past five years, utilizing the annual reports, the prospectus and the previous prospectus on the public offering of the stock.

THE COURT: The prospectus that is in issue in this case?

THE WITNESS: Yes, this one right here.

The record of Wells, Rich, Greene is an excellent one. Gross billings have increased from approximately 77 million in fiscal year ending October 31, 1969 to 115 million in the year ended October 31, 1973. Commissions and services fees have increased accordingly.

This is reflected in the earnings per share, which have gone on a diluted basis from $1.02 a share to $2.04 a share in the fiscal year ended October 31, 1973.

They have doubled in five years, which is a very impressive record indeed.

For the ten months ended August 31, 1974, earnings per share diluted ~~with~~ were $1.46, up slightly from $1.43 inthe corresponding period a year ago.

The qualitative factors concerning Wells, Rich & Greene are also excellent. The company has a very fine reputation. They are noted for their creativity in advertising. They have first-rate clients. And in addition they have excellent business management. This is reflected in the fact that they were able to take down net considerably more than the industry average.

I then looked at the history of the price of

the stock and the price earnings ratios at which the stock had sold in the past.

The stock has sold in the last five years as high as 27-7/8 in 1972. Now, a key element in valuation, of course, is the price-earnings ratio. And in my affidavit I set forth the high and low and average price-earnings ratios at which the stock had sold in the past five years.

In 1969, for example, the range was 18 to 9.

In 1973 it declined to 10 to 3. Only two years. '70 and '73, did the stock sell below nine times its earnings.

Now, on the basis of this I feel that the price-earnings ratio that the stock was selling at just prior to the offering, in September, was well below its historic average in the past.

Now, the reason for that, there are a good many reasons. The whole stock market has been depressed, the country is in a condition of inflation and recession at the same time, concern about the energy problem, oil and the Middle East, and the fact is that the entire stock market is selling at a very low price-earnings ratio historically.

But I felt that the intrinsic value of the stock would have to be determined on the basis of an historic price earnings ratio, and the average of the high and low for the past five years comes to 10.7 times.

Now, the earnings for the past full year are $2.04 ~~$2.04~~. I don't know what the earnings will be for the fiscal year ended October 31,1974, but I would believe be that they would be at least equal to that, if not more.

Well, applying the historic price-earnings ratio of 10.7 to the earnings of $2.06, you come up with an intrinsic value of about $22 per share.

If we wish to be more conservative, we might allow for some decline in earnings, which could happen, and the average for the last five years have been $1.78 per share fully diluted.

Applying again the same historic price-earnings ratio, we come up with an intrinsic value of slightly in excess of $18 per share. So the average is slightly over $20.

So I therefore concluded that the intrinsic value of the stock, namely roughly $20, is greatly in excess of the offer. The offer is somewhat less than the $10.43 per share book value.

THE COURT: All right.

Q What is meant by the term "intrinsic going concern value," Mr.Belfer, that you have used?

A Well, as accepted in security analysis work, the intrinsic value is what the stock is really worth in

terms of earnings and some multiple of the earnings.

Q In your analysis, did you take into consideration market value?

A I did.

Q And what were your considerations with respect to market value?

A Well, I looked at the past record, market for the last five years. I am aware of the fact that just prior to the offer the stock was selling at 5-1/2. But I felt that that price was unrealistically and irrationally low for a company with their excellent earnings record and with its fine quality of management and reputation.

Q Now, in your opinion, is a value for the common stock in Wells, Rich, Greene based only on current market and current economic conditions the proper basis for evaluation in relation to the exchange offer?

THE COURT: He has already answered that.

MR. S. NEMSER: Your Honor, I will move on, then.

THE COURT: He has told us how he arrived at it, hasn't he?

Q In the light of your analysis and the considerations thatyou have taken into account in reaching your conclusions, do you consider the exchange offer to be fair?

A It is below the intrinsic value and the book value.

Q Now, with respect to the book value of Wells, Rich, Greene, is there a difference between book value of a service company, such as Wells, Rich, Greene, and book value of a manufacturing company?

A Yes.

Q What is the difference?

A A manufacturing company makes physical commodities and for this they need factories, machinery and very expensive equipment.

A service industry, such as advertising such as Wells, Rich & Greene needs office space and a few desks. The net result is their capital -- their book value consists mainly of accounts receivable, cash, things like that. So I would call it very clean book value.

Q Now, as a vice-president and security analyst and portfolio manager of Wood,Struthers & Winthrop, do you determine which securities will be purchased or sold for portfolios?

A I do.

Q Now, what factors, if any, do you apply in determining whether a particular security should be purchased or sold?

A Well, we try to make some estimate of what we think the intrinsic value is.

THE COURT: What you think intrinsic value is?

THE WITNESS: Of the company's common stocks. If the stock is selling above that, it is a sale. If a stock is selling below that, it could be a purchase.

Q Is the method that you use in determining purchase and sale of securities that you just mentioned a generally-accepted method used in the financial community?

A I believe it is.

MR. S. NEMSER: Your Honor, I have no further questions of Mr.Belfer.

THE COURT: Any questions, Mr. Sisk?

MR. SISK: Yes, your Honor.

CROSS-EXAMINATION

BY MR. SISK:

Q Mr. Belfer, when were you retained by Mr. Nemser?

A I heard about the case approximately ten days ago.

Q From whom did you hear about the case?

A Mr. Nemser put me into contact with Mr. Kaufman

Q I am not clear. Did you get a telephone call on this from Mr. Nemser?

A Yes.

A Yes.

Q And did Mr. Nemser askyou to talk with Mr. Kaufman?

A Yes.

Q And who has retained you as an expert? Mr. Kaufman or Mr. Nemser?

A Mr. Kaufman.

Q On what day were you retained?

A I don't know precisely. I'd say about a week ago Friday.

Q What arrangements were made between you and Mr. Kaufman for your compensation?

A I will be compensated solely for my time.

Q On what basis?

A I will be paid on an hourly basis.

Q How much?

A $100 per hour.

Q Is there any factor for contingency?

A None whatsoever.

Q Now, after you were contacted and talked with Mr. Kaufman on approximately Friday a week ago, what did you do?

A Mr. Nemser gave me a copy of the prospectus and

I proceeded to look at it.

Q Did you know anything about Wells, Rich, Greene before Friday a week ago?

A Yes.

Q What?

A I heard Mrs.Lawrence speak at the New York Society of Security Analysts approximately a year ago, I believe it was, when she spoke about Wells, Rich & Greene. I heard that it was a first-rate company in the advertising field.

Q And does that sum up your knowledge about Wells, Rich, Greene as of Friday a week ago?

A Yes.

Q When did you actually begin work on the preparation of the materials that went into your affidavit, which is dated or sworn to November 20, 1974?

A Last weekend.

Q And the materials you had ~~with~~ was the prospectus?

A No. I had the prospectus, I have annual reports, I have various other materials from Standard & Poor's, Moody's and so forth, and the annual reports of the company.

Q And between Saturday, when you started to work on it, you say, and Tuesday,,when the affidavit was drafted, you completed your work?

A Yes.

Q And you executed the affidavit on Wednesday?

A Wednesday, yes.

Q Can you tell us approximately how many hours you spent on the matter between Saturday and Wednesday?

A I'd say approximately -- I have been keeping a record -- between 10 and 15.

Q Did you look at any other documentation other than the materials you have described for us?

A Mr. Nemser gave me yesterday a copy of something put out by White, Weld.

Q But prior to the execution of your affidavit on November 20, you looked at no other materials other than the ones you have described for us?

A That's correct.

Q Now,you say in Paragraph 5 of your affidavit, "In the course of my evaluation of W.R.G., the following factors were given careful analysis. (A), the history of the company and the nature of the business."

I take it, Mr.Belfer, that whatever history you had of the company you got from the prospectuses and the annual reports, is that correct?

A That's correct.

Q Now, tell us what you found out about the nature

of the business.

A They are in the advertising business, mainly. They have a few other things going, like a movie operation and an oil operation. But the business is basically acting as an advertising agency.

Q And did you know anything about the advertising agency business other than what you may have learned from Mrs. Lawrence when she appeared before the Security analysts?

A Yes.

Q Will you tell us what you knew about the advertising agency business?

A Well, when the advertising ~~agency~~ agencies began to go public roughly seven or eight years ago, we became interested in them as an investment medium. So at that time I studied most of the prospectuses that came out on those companies that went public.

Q Which ones?

A Interpublic. B.B.D & O., Oglesby & Mather, and a few others. J.Walter Thompson, Doyle, Dane, Bernbach.

Q Did you recommend to your company that it buy any of the stocks of those agencies?

A No, I didn't.

Q Had your firm acted as an underwriter with respect to any of those issues?

A Not that I know.

Q Do you know of any significant differences betweenWells, Rich, Greene and the ~~public~~ publicly-held advertising agencies you have just listed?

A There are two differences I can think of. One, it is much smaller, it is not one of the giants. Secondly, they do practically nothing ~~aboard.~~ abroad. And most of the other advertising agencies have been attempting to go abroad.

Q Any other differences that you know of between Wells, Rich, Greene and the other publicy-held agencies?

A Nothing of significance that I can think of.

Q Do you, for example, know how the other publicly held ~~agency~~ agencies handled the matter of deferred costs, accounting treatment for deferred costs?

A No, I don't.

Q Do you know how Wells,Rich, Greene handles it?

A Very conservatively, as I understand it.

Q What do you base that understanding on?

A Reading of the prospectus.

Q And that is all that you know about it?

A That's all,sir.

Q Now, you say in Paragraph 5B of your affidavit that you also gave evaluation and consideration to the financial condition of the business. What did you mean by

that?

A Earnings, book value and net working capital position.

Q Did you give any weight in your evaluation to the existence of debt?

A Yes, which were very little in the case of Wells, Rich & Greene prior to this offer.

Q Tell us what the debt was that you gave consideration to?

A Well, there is some bank debt and that's about all.

Q Can you point to that in the prospectus?

A Yes. It is on Page 48: Installment loan payable, $336,000, and then current installment loan payable $92,000, for a total of debt of $430,000, approximately.

Q And that was the entire consideration of the debt structure of Wells, Rich, Greene that you gave?

A It was very simple.

Q Well, Mr.Belfer, I take it then that you did not take into account the existence of debt as represented by long-term lease liabilities.

A Well, I was aware of it. But there is some question as to just how to treat that.

Q Did you take it into consideration, is my question.

A Yes.

Q And what was your consideration of it?

A It did not require special treatment.

Q Can you tell us approximately, without now looking at any papers before you, what the long-term lease liability debt obligations of Wells, Rich, Greene amount to?

A As I recall, they have excellent space in the General Motors Building. I understand they were paying about $12 a square foot, and I believe it came to about a million dollars a year. Then there is something in St. Louis, too, Gardner Advertising.

Q Do you know for how many years they are obligated for those leases?

A I believe it was 15 more years, approximately, together.

Q That is a pretty substantial debt obligation, isn't it?

A Not if you are making money.

Q Do you assume that the company is going to make money throughout that 15-year period?

A Based on their excellent record, yes.

Q It is a pretty broad assumption, isn't it?

A I have to make it.

Q Isn't it standard security analysis to look at long-term debt as represented by lease obligations?

A Yes and no. It depends on the industry. Where companies such as in the department store field have been selling their stores and then leasing them back, there you would look at it. But where a firm simply leases space for its own use, it is just another fixed cost of doing business.

Q Now, in connection with your analysis of the financial condition of the business, did you make an appraisal as to the profitability or lack thereof of the motion picture venture of Wells, Rich, Greene?

A I did.

Q And what was that analysis?

A The movie they produced hasn't done very well, Dirty Little Billy. But I felt that, as I pointed out earlier, the other activities of Wells, Rich & Greene were very minor and that the heart of the business is advertising.

Q Do you know how much of the balance on Dirty Little Billy of deferred costs still has not been written off?

A In excess of $800,000, I believe.

Q Did you take that into consideration?

A Yes. I did not feel that -- the company had basic earning power of $3,300,000 a year before taxes and I don't think that would be too great a burden.

Q Mr. Belfer, are you familiar with what percentage of shares of the stock of listed companies are usually covered by options to employees?

A It varies from company to company.

Q Is there a general figure that you have in mind that represents the percentage of, let's say, most Standard & Poor companies?

A I have no idea.

Q Well, would you be surprised to find that the percentage of stock held under options or subject to options of Standard & Poor's top five hundred companies would exceed 5 per cent?

A Yes, I would. That would strike me as being on the high side. But for a company like Wells, Rich & Greene, it wouldn't.

Q Do you know what the percentage is of stock that is subject to options of W.R.G.?

A No, I don't.

Q You didn't make any attempt to look into that matter, did you?

A It is in the prospectus, but I didn't -- most of the options, I noticed, were well above the present market price.

Q Wouldn't those options constitute a very substantial dilution factor if the stock prices moved up, as you apparently anticipate they will?

A Yes, it would. But that would be good. The stock would be up.

Q But it would be a very big dilution factor for the other stockholders, would it not?

A Depending on the amount that it is.

Q And did you take that into consideration?

A Not really.

Q You have testified that the pattern of earnings show a steady increase for the period that you looked at, the period of five years. Do you have any knowledge as to what the pattern of earnings were before that period?

A A little bit, yes. But the prospectus concentrated on five years. The earnings before they went public -- well, in '66 they were 38 cents, then they went to $1.87, and then they went down to 72 cents. This is in the very early years, prior to the five-year period.

Q Now, Mr.Belfer, by very early years, you are talking about just the immediate period preceding that,

because their company has only been in existence since 1966. Isn't that true?

A That's true.

Q Well, there is no steady pattern there, is there, if you go back beyond the five-year period?

A There is for six years.

Q Conveniently you didn't look behind that, I take it?

A I felt five years was enough.

Q In your Paragraph 5D, one of the factors that you say you took into consideration ~~with~~ was the current and prospective economic conditions as of the date of valuation, both in the national economy and in the advertising industry of which WRG is a part. What do you mean by "the current and prospective economic conditions in the national economy"?

A Well, right now we are in a recession. There is no question about it. The recession -- and as the result I feel common stock prices are unduly depressed.

At some point, I don't know when, nobody does, the country will get out of the recession, and at that stage I would hope that common stock prices would go up reflecting that.

Q Well, are you making projections that you are prepared to tell this Court about today?

A No. No one would.

Q You have said in your sworn affidavit that you took into consideration prospective economic conditions in the national economy, did you not?

A Yes.

Q Well, I am sorry, I don't understand what you mean, then.

A Well, I would say, if you want my projection, that the recession is going to continue. Unemployment will continue to go up, gross national product may actually decline, and I would say ~~there~~ that will continue for at least another six months, perhaps into the middle of 1975.

Then some time around then, assuming no worsening of the energy crisis, the economy could resume an upward course.

Q And that is what you meant in Paragraph 5D?

A Yes, sir.

Q Pretty speculative, isn't it?

A No more so than other economic forecasts.

Q What did you mean by your reference to current and prospective economic conditions in the advertising industry?

A Well, the advertising industry to some extent is recession-proof but not fully, because people still have

to advertise. But there are certain groups who are not advertising now, such as the oil companies -- well, they have changed their advertising, but they certainly are advertising less, the automobile industry may advertise less for the time being, because of falling car sales.

But, again, at some point when economic conditions look better, big advertisers may increase their advertising budgets again.

Q And what do you base that projection on?

A It has worked this way in the past. And, again, most large major companies set aside a certain percentage of their sales for advertising.

Q Well, now, when you said you looked at these factors as part of your review, I take it you did that with an eye toward having them be reflected ultimately in the valuation that you were being asked to come up with, is that correct?

A That's correct.

Q How did these speculative factors that you have just described for us with regard to the prospects for the economy generally and for the advertising business -- what role did they play in your ultimate conclusion?

A They played a role in my determination of the earnings, which I said should continue at the rate of

2.04. If I felt the country was going into a major recession which would last for several years, I certainly couldn't say that Wells, Rich & Greene's earnings would continue at the $2.04 rate.

I also made the assumption, basic one, that the price-earnings ratio would be about ~~10.9~~ 10.7 times based on historic past. Again, if interest rates zoom upward again and the ~~primary~~ prime rate goes to 14, 15 per cent, and the country is in a recession and inflation, then that price-earnings ratio of 10.7 will definitely not apply.

But I am assuming that at some point in the future more normal economic conditions would recur, interest rates would go down somewhat, and the historic price-earnings ratios of the past could be used safely for the future.

Q Did you make any investigation, Mr.Belfer, as to whether the nature of advertisers' requirements have changed any in recent times?

A No, I haven't. TV advertising with Wells, Rich & Greene is excellent. I know it is getting an increasing percentage of the advertising dollar.

Q But you don't know of any change in the psychology or philosophy of the companies that are spending the money for advertising?

A Not that I know of.

Q Did you make any investigation of the drop in the earnings of the other publicly listed companies in the advertising business?

A I looked at them.

Q Can you tell us approximately what you recall of their performance?

A Most of them are about the same or down slightly. Those that have gone abroad have suffered abroad, such as Interpublic. The earnings have actually gone down in the case of Interpublic, ~~aboard~~ abroad, part of that due to inflation, also due to strengthening in the value of the dollar, which translates itself into lower foreign earnings.

Q If I told you that there has been a one-third drop in the earnings of the top six or seven publicy-held agencies, would that surprise you?

A A little.

Q You didn't know about it, I take it?

A I didn't think it was that high.

Q In your Paragraph 5, in which you were describing your evaluation of Wells, Rich & Greene and the factors that were given careful analysis, you say, in subparagraph (e), that you gave careful analysis to "the investor's appraisal of the earnings and dividends of actively-traded securities and of the securities of companies then engaged in the same

line of business."

A Yes.

Q Would you tell us, Mr. Belfer, where that factor is reflected in your affidavit other than in that paragraph?

A Only in the qualitative concepts. Other advertising agencies at the moment are selling at about three and a half to five times earnings. In the past, however, they have sold at ten times, 15 times and even somewhat higher. The dividend factor I looked at, but I decided it was of no real significance.

Q So you found that the price-earnings ratio of the other publicly-held agencies was way down, is that correct?

A Yes.

Q How about the prices of their stocks? Did you look at that?

A Historically, way down.

Q And how did the prices of advertising company stocks compare generally with the prices of, let's say, the Standard & Poor top 500?

A In the last two years they have gone down considerably more.

Q Do you know why?

A No, not really.

Q Did you make any effort to find out why?

A I tried to determine it, but I can't give you an explanation. My own thought was that the investing public at the moment was more interested in companies with assets in the ground, a hedge against inflation --

Q In your subparagraph 5(f), the final factor that you looked at was the book value of WRG stock, which you calculated at 10.43, is that correct?

A I didn't calculate it. It is right in the prospectus.

Q Would that book value be the same if it were adjusted to represent the deferred costs?

A Yes. The deferred costs are listed as an asset.

Q In Paragraph 8 of your affidavit you summarize, in a table, the price-earnings ratios for the period 1969 to 1973, and you show that in 1970 the low was 5 and in 1973 the low for Wells, Rich, Greene, our price-earnings ratio, was 7-1/4. And when you testified here this morning you made reference to those two years as being exceptions to the other years.

Did you make any investigation as to why those low P-E ratios occurred in those two years?

A In '70 the market fell off, the whole stock market was off, and in '73 the stock market began to fall.

Q Is that the sum total of your investigation of why that happened?

A Yes.

Q You show no 1974 figures in the table. Would you tell us why?

A Well, no reason. I just wanted to get the five years in. But, again, the price-earnings ratio was extremely low, based on the $2.04 earnings it would have ranged from about two and a half to four times.

Q So if you showed the 1974 picture, it would have showed an even bleaker picture on the P-E ratios, is that correct?

A Yes.

Q I ask you the same question with respect to your table in Paragraph 9. I see no 1974 figures. Why are they absent?

A Well, the same thing. I wanted to have five complete years, and it was simpler to take it for the period up to the offer. It would have ranged from 9-3/4 to 5-1/2. And based on earnings of $2.04 that would give you a price-earnings ratio of roughly four and a half to two and a half.

Q What would that do to your calculation if you

had included that year?

A It would have knocked it down somewhat.

Q From 10.7 to approximately how much?

A May I calculate?

Q Surely.

(Pause.)

A I come up with 9.5.

Q Will you tell us, Mr. Belfer, how, in Paragraph 10, you arrived at a figure of $1.78 as being the average of the past five years earnings on a fully-diluted basis?

A Well, I simply took the earnings in the prospectus, $1.02, $1.24, $1.63, ~~$1.63~~ $1.83 and 2.04.

Q And what was the $2.04? What period did that 2.04 cover?

A That was the fiscal year ended October 31, 1973.

Q And is it your testimony that if you take those figures and add them all up and divided by 5, it will come out to $1.78?

A Yes.

Q Would you do that calculation for us now, please, and see if you come out that way right now?

(Pause.)

A I come up with, at the moment, $1.55.

Q That is what I come up with, Mr. Belfer.

A I don't see how that happened.

Q Mr. Belfer, I want to read a quotation to you and ask you whether you agree with it.

"There is no reason to think that a more academic appraisal of the stock would be a closer approach to true value than the practical judgment of those most interested in the company and its stock, the daily traders who are backing their judgment with their money."

Would you agree with that quotation?

A It depends on what purpose. Certainly in terms of what the stock is actually selling at in the market, it is market price. But in terms of making a long term investment, what I look at is this concept of intrinsic value. And if a stock is selling below intrinsic value, I feel it is a good investment.

Q You feel Wells, Rich, Greene stock at its present market of $7 or $8, whatever it is today, represents a good investment?

A Yes, I do.

Q And when it was $5.50 you thought it was a good investment?

A Yes.

Q Did you recommend to your firm, Wood, Struthers,

that it buy any Wells, Rich, Greene stock?

A No. But for another reason. We rarely invest in positions where the market values of the stock is under $100 million.

Q Has your company ever held any advertising company stock?

A Not that I know of.

Q Do you make recommendations to the public?

A No, not to the public.

Q Do you make recommendations to your customers?

A My private clients, yes.

Q Have you recommended to any of them that they buy Wells, Rich, Greene stock?

A No.

Q I am going to read you another statement, Mr. Belfer, and I would like to know whether you agree with this:

"We know of no perfect set of standards against which a company's results can be measured, but instead have developed a system to allow us to place a relative value on a company."

Do you agree that the relative value factor is one which should be looked at when evaluating the worth of a company stock?

A Yes.

Q And what does that term mean?

A It means relative to the market as a whole and relative to other industrial groups.

Q In other words, relative to what the stockholders could do with his money if he didn't have it invested in Wells, Rich, Greene, for example.

A Yes.

Q And if the stockholder took the package that is being offered, of $3 cash and $8 debenture, and converted that into, entirely into cash by selling the debentures, he would have a package in excess of $5.50, would he not, on the anticipated trading of debentures?

A No question about it.

Q And he could buy some other stock that might also be depressed under today's market conditions, he could buy more of that stock as the result of that package than he could have before, isn't that correct?

A That is correct.

Q Now, I am going to read you one other statement. I would like to know whether you agree with that.

"Investors at any point in time have alternative uses for their capital. We therefore must relate the price of a stock to the expected return from alternative

sources."

Do you agree with that?

A Yes.

Q Did you make any analysis of what the stockholder of Wells, Rich, Greene could do with this package if he got it?

A No.

Q Is it the investment policy of Wood, Struthers to sell stocks when they no longer continue to provide their required return?

A Well, it is not a hard and fixed rule. There are other considerations, such as tax considerations. So we are always considering alternative investments.

Q Do you think that would be a reasonable thing for the stockholders of Wells, Rich, Greene to do?

A Yes,sir.

MR. SISK: Thank you.

THE COURT: Mr. Nemser?

MR. NEMSER: No questions, your Honor.

THE COURT: I suppose one of the questions -- I am not too familiar with this area, and maybe I have some wrong concepts, but the assumption, in terms of Mr.Sisk's questions to you about the stockholders being able to sell their debentures, that is that means there has to be

a market for it?

A Yes.

BY THE COURT:

Q Does that mean or does it not mean that if the availability of selling means that there will be -- the market will be less depressed? Does that make -- their ability to sell, that would be better or worse, if the market is up or down?

A Well --

Q Or does it make any difference?

In other words, what I am trying -- what I am really trying to get at is, will economic conditions aid the market, a market for the debentures or will it be worse?

A It would be one of the factors, yes.

There is a market, your Honor, for the debentures right now an over-the-counter when issued market.

Q If economic conditions remain as bleak as apparently the analysis of Wells, Rich & Greene are, would that affect the marketability of the debentures?

Would these stockholders be able to sell them and to make any money on it?

That is what I am trying to find out.

A Yes, I believe they could sell them.

There is an active over-the-counter when issued

market right now.

THE COURT: I see.

Q Then it has nothing to do with the conditions of the market?

A Well, a bond less so than a common stock.

THE COURT: Thank you very much.

(Witness excused.)

THE COURT: All right, call your next witness, please.

MR. S. NEMSER: Mary Wells Lawrence, please.

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xx MARY GEORGENE LAWRENCE, called as a witness by the plaintiff, being first duly sworn by the Clerk of the Court, testified as follows:

MR. S. NEMSER: May I bring the lectern a little closer.

THE COURT: I don't know what kind of voice Miss Lawrence has.

THE WITNESS: I will try to speak up.

THE COURT: But that is the better way to do it. You want Mr. Sisk to hear what his client is saying.

MR. S. NEMSER: Very well, your Honor.

xx DIRECT EXAMINATION

BY MR. S. NEMSER:

Q Mrs. Lawrence, you are chairman of the board of directors and chief executive officer of Wells, Rich, Greene, is that correct?

A Yes.

Q And were you one of the co-founders of that company?

A Yes.

Q And that company was organized when?

A Well, it was actually -- it was organized in 1966.

Q Now, adjusting for subsequent 10 for 1 stock split and the reclassification of the Class A and common

stock of the company, you originally subscribed for 301,000 shares of a stock of Wells, Rich, Greene, is that correct?

A That's correct.

Q And you paid ten cents a share?

A I paid ten cents a share for founders stock, which of course was worth nothing at the time.

Q You paid ten cents a share, is that correct?

A That's right.

THE COURT: Mr. Nemser, I think I've seen that in your brief and papers, but I fail to see how what was paid for the stock in 1966 has to do with the issue that is facing us today.

MR. S. NEMSER: Your Honor --

THE COURT: In any event, if there is some relationship, fine, then, if you can show it to me. But I don't see what that has to do with the issue before me of misrepresentation of facts and a fraudulent scheme that is current as of 1974.

MR. S. NEMSER: Your Honor, on page 13 of the prospectus, which is Plaintiff's Exhibit 1 --

THE COURT: I have it.

MR. S. NEMSER: -- there is set out in the second full paragraph a description of the sale of certain shares by Mrs. Lawrence with respect to two public offerings.

The prior paragraph finishes with the sentence "It was against this background that the company initially offered its stock to the public."

The picture that the public stockholders are getting in this particular area --

THE COURT: All right.

Now, I get the point. One of your allegations is that Mrs. Lawrence and the rest have not set forth in this prospectus the price at which they bought the stock and therefore indicated what kind of profit they realized by the sale of a first public offering.

MR. S. NEMSER: The first two public offerings, are completely omitted from here, as I'll bring out on testimony --

THE COURT: All right. Then let's go back to the testimony. I got the point. At least I understand what you are trying to do anyway.

BY MR. S. NEMSER:

Q Now, turning to Plaintiff's Exhibit 1, Mrs. Lawrence -- let me get you a copy of that. (Handing) Would you kindly turn to page 13. Under the heading background and purpose, it is there stated that motivation of your personnel, through stock ownership, was considered a factor to attract good personnel to your company, and then you go

jge 4 Lawrence - direct

on to say "It was against this background that the company initially offered its stock to the public."

Will you tell the Court, Mrs. Lawrence, the total number of shares of Wells, Rich, Greene that was ever sold to the public by the company itself?

A I would have to look at all the documents to give you that number. I don't have that number right at the top of my head.

Q Were there ever more than two public offerings?

A No.

Q Did the company sell any stock in the second offering?

A No, not in the second offering, only in the first.

Q In the first offering, do you know how many shares the company sold?

A I'm sorry. You'll have to give me the document.

Q Let me refresh your recollection. I show you Plaintiff's Exhibit 10. Does that refresh your recollection that the company sold only 50,000 shares out of the total number?

A That's right.

THE COURT: Where is that, Mr. Nemser?

MR. S. NEMSER: That is on the first page of the exhibit, your Honor.

THE COURT: All right.

A The company sold 50,000 shares because it was not in great need of capital at that time.

Q Mrs. Lawrence, let me ask you to answer questions that I ask.

A I'm sorry.

Q Your own counsel can take you on redirect.

THE COURT: Mr. Nemser, if you want any instructions given to the witness, you ask me to give them to her.

MR. S. NEMSER: Sorry, your Honor.

Q Now, under that first offering in 1968, is it not a fact that you and other founders and directors sold 359,900 shares against the company's 50,000, isn't that right?

A That's correct.

Q And you, yourself, sold 75,250 shares, is that correct?

A Correct.

Q If you look at page 18 of that exhibit number 10, with respect to the shares and the price of $17.50 a share, you grossed $1,316,875, correct?

A Yes, before taxes.

THE COURT: Why don't -- there is no point in our getting obvious on the record like this?

MR. NEMSER: No, your Honor.

jge 6 Lawrence - direct

THE COURT: I'm reasonably sure Mr. Sisk will stipulate to what is obvious, to those facts.

Let's move on and get something on the record that's not as obvious.

MR. SISK: I don't even need to stipulate, your Honor. It is in evidence already in Plaintiff's Exhibit 10.

THE COURT: All right. Fine.

BY MR. S. NEMSER:

Q Now, between the first and second offering, that is, between the 1968 and the 1971 offering, you sold shares, additional shares, in the public market, didn't you?

A Yes, I did.

Q And you sold a total of 15,000 shares?

A That's right.

Q And you sold this when there was actually a public market created by the first offering, isn't that right?

A Yes, sir.

Q Now, let's turn briefly to the second public offering, of 1971, which is Plaintiff's Exhibit 11?

A May I have a copy of that?

Q Yes. (Handing)

A Thank you very much.

Q Now, in Plaintiff's Exhibit 11, at page 17, there is set forth your sale of 110,850 shares at $21.75 a share, right?

A Right.

Q Now, in 1972, after the stock was listed on the New York Stock Exchange, in fact in July 1972, you sold an additional 15,500 shares in the open market, didn't you, at $21.88, or .875.

A I believe I only made one sale of 15,000 shares in the open market.

Q Well, let's sort of check that very quickly, Mrs. Lawrence. Look at page 17.

After your sale of the 110,850 shares on the seco offering, you had a hundred thousand left, is that correct?

A That's right.

Q How many shares did you have at the end of the year 1973?

A That's when I sold the 15,000, was in 1972. That's my memory.

I may be wrong, but that's my memory, that I sold 15,000 shares once in 1972. Maybe someone could tell me differently.

Q Are you saying that you only sold 15,000 shares t the public aside from your two public secondary offerings?

A That's my memory, sir. Perhaps someone can tell me differently. That's what I remember.

Q Let me try and refresh your recollection. Here is your sale from the SEC ~~Officer and Director of Trading~~ officers and directors trading, which indicates your sale in November --

THE COURT: Is that in '72?

MR. S. NEMSER: I'm just trying to refresh her recollection.

MR. SISK: May we see the document?

MR. S. NEMSER: Sure (handing).

A It cannot be 10,000 shares. In 1970? Not 15, but 10,000 shares in 1970? I have no recollection of it.

(Pause.)

A Itis possible, Mr. Nemser. My husband and I own everything, pretty much together, and it is possible it is a decision he made and I'm really not -- I just don't recollect it.

Q Let me see if we can carry this right through from those two prospectuses.

(Pause.)

THE COURT: Mr. Nemser, I really wish you wouldn't waste time on something that you and Mr. Sisk can work out. Whatever Mrs. Lawrence ~~brought~~ bought or sold and so forth, I'm sure that if the facts are broughtout, she will agree to it

and we can get that on the record. There is no point in wasting time on this.

Q I ask you to look at Plaintiff's Exhibit 13, 14, and 15. Those exhibits, Mrs. Lawrence, if you get a chance to look at them ~~there~~, indicate that you purchased in January, February and March of 1974, a total of 30,500 shares at prices ranging between eight and a half dollars and nine and a quarter dollars.

You made those purchases, didn't you?

A I did indeed.

Q Can you show us where in the prospectus your purchases appear?

A In this prospectus?

Q The current one.

A I believe they do appear, Mr. Nemser.

MR. SISK: If your Honor please, I raise an objection to this question. The prospectus is a document that is in evidence and the document speaks for itself. And the fact is that the total number of Mrs. Lawrence's holdings are clearly recorded in the document.

THE COURT: The objection is overruled. But I think it is a fair question.

A I don't think that it was in the prospectus because we didn't think it was a material amount.

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Q Who told you that?

A Well, I buy the best counsel I can get, sir, and I listen to my lawyers, and I believe that it wasn't felt necessary, since we were putting in the total number of shares that I owned.

Q In other words, it was your opinion that purchases in the year of this exchange offer for all the public shares, your purchases at prices which were higher in some instances than this offer would not be important to the stockholders?

A Mr. Nemser, the prospectus is a result of the advice that I received from counsel.

Q Do you know Catherine Gibson?

A My daughter?

Q Is that your daughter?

A Catherine Gibson Lawrence?

Q Well --

A Catherine Gibson at the agency. Excuse me.

Q That's right.

A I'm very sorry. Yes, I do know Catherine Gibson.

Q I believe she spells her name C-a-t-h-a-r-i-n-e?

A That's right.

Q And she is a vice president of the company?

A That's right.

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Q And she has been a vice president of long standing with the company, hasn't she?

A Yes, she has.

Q Now, do you know whether she purchased any shares of common stock with Wells, Rich, Greene in 1974? Do you know that?

A Yes, I read it in the prospectus.

Q You read it in the prospectus.

A Yes, I didn't know it until then.

Q That she bought shares in 1974?

A I thought that was pretty smart of her.

Q Where is it in the prospectus?

A Excuse me. It isn't in the prospectus, is it?

Q No, it isn't.

A I read it somewhere, because I didn't know it until I read it on some piece of paper.

Q Well, it is not in the prospectus, at least I haven't been able to find it, Mrs. Lawrence.

Now, the date of her purchase I think is interesting and let me ask you whether she came to you before she purchased it?

THE COURT: Mr. Nemser, I don't want any--I really don't want any testimony from you or from Mr. Sisk. I would like to have the testimony from the witness stand. You

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confine yourself to questions, please.

Q I ask you to look at Plaintiff's Exhibit 18.

According to this Form 4, Catharine Gibson purchased 1,000 shares on September 5, 1974, an over the market purchase at 7 and three quarters. That was the day after the announcement of the exchange offer, was it not?

MR. SISK: We can stipulate to that, your Honor.

MR. S. NEMSER: All right.

THE COURT: All right.

Mr. Nemser, the date -- the exchange offer was on September 4. I suppose that's clear, isn't it? The date is clear here. Let's not prolong this with the obvious. You have these matters here. I can read.

Q Did Mrs. Gibson come to you before she purchased any shares on that date?

A No, sir. Mrs. Gibson --

Q Is she one of the officers who has indicated to the company that she is not tendering?

A I don't know whether Mrs. Gibson is tendering or not. She is not a member of the top management, and I really don't know whether she is tendering or not.

Q Will you look at page 3 of Exhibit 1 under the heading "Effect of the exchange offer," and there is a statement "Officers owning 38,202 shares, approximately 2.4

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percent of the outstanding shares, have informed the company of their present intention not to participate in the exchange offer."

Do you know who those particular officers are?

A No, I don't, sir. Mr. Jacobs did. He is the one who would have went around and asked about it. He is the one who would have checked on the people who wanted to tender any.

Q According to Plaintiff's Exhibits 16 and 17, Mr. Colnar and Mr. Challis each bought shares in July 1974.

Did you know that fact?

A No, I don't. I discovered it yesterday in my lawyer's office, but I did not know it. I'm sorry. I am supposed to answer questions yes or no.

Q On the first page of Plaintiff's Exhibit 1, in the paragraph immediately under the box at the top, there is the sentence, and I quote, "The directors have agreed not to participate in the exchange offer."

Is that a written agreement?

A No, sir.

Q I take it then it was an oral agreement?

A It is an oral agreement. That's as I understand it. Unless I am informed differently, it is an agreement we made at the Board of Directors meeting.

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Q Was that at the meeting on September 4th, 1974?

A Yes.

MR. S. NEMSER: Your Honor, I would like to offer in evidence as Plaintiff's Exhibit 24, minutes of the regular meeting of the Board of Directors of Wells, Rich, Green, held on September 4, 1974.

THE COURT: Show it to Mrs. Lawrence. If she says that's what it is, fine.

A Yes, sir.

Q Do those minutes actually set forth the matters that came before the meeting on that day?

A Well, our minutes are a little what you call bare bones minutes, and I imagine there were a number of things that we discussed that are not in the minutes. We try to keep them to a minimum.

THE COURT: Mrs. Lawrence has identified that as being the minutes.

A That's essentially what happened.

THE COURT: They will be received then as Exhibit 24.

xx (Plaintiff's Exhibits 1 through 24 for identification were received in evidence.)

Q Who brought up the matter of having an agreement that the directors wouldn't tender?

A I don't recall. It was a discussion that we had. I think it was towards the end of the meeting.

THE COURT: Does it make any difference to this proceeding?

A But there was general agreement that it would be appropriate.

THE COURT: Does it make any difference in this proceeding?

MR. S. NEMSER: It might, your Honor. It might go to the motive for --

THE COURT: I don't see how that helps in any way at all, one way or the other. The fact of the matter is the agreement was made. I don't understand. What difference does it make who brought it up.

Q What was the reason for the agreement?

A Well, we felt that it would be appropriate for the board of directors to show a great sign of faith in the future of the company to support the debentures.

We did not want to communicate the idea that we felt that, although the offer was appropriate and very much needed by the company, that the company could not support its debenture offer. And we felt that by agreeing to stay firm with the company that we would be demonstrating our faith in the company.

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MR. SISK: If your Honor please, I am having trouble hearing. I think Mrs. Lawrence does speak up a little loud when Mr. Nemser is not hovering at her elbow.

A I'm sorry. I will try to speak out.

THE COURT: I think you should stay back. And if you get restless, walk that way (indicating).

Q Do you have a copy of Exhibit 24 in front of you?

A No. I think they were taken away.

THE COURT: Why don't we let the reporter rest his hands. We will take a ten-minute recess.

(Recess.)

BY MR. S. NEMSER:

Q Mrs. Lawrence, I ask you to look at Exhibits 4, 5 and 6, the annual reports of the company for the years 1961, 1962 and 1963, and I first ask you --

THE COURT: What years?

Q Sorry.

Exhibit 6 is 1973 annual report.

THE COURT: And 5 is '72 and what is '71?

MR. S. NEMSER: And 4 is '71, your Honor.

THE COURT: All right.

Q Will you direct your attention, Mrs. Lawrence, to the letter that you and Mr. ~~Morse~~ Moss wrote to the stockholders which accompanied the annual report and formed a part of it?

That's Plaintiff's Exhibit 6, for 1973.

The last paragraph of that letter, reads "Looking ahead, we believe that the problems faced by business and society will become tougher and more complex. We believe that these challenges will present opportunities for Wells, Rich, Greene's growth and achievement unlike any we have seen."

Would you tell the Court what opportunities you were referring to in that statement?

A Well, Wells, Rich, Greene has always been given accounts that had particularly large problems. We have never, for example, been given an account that did not have a very large problem. And I think what we were saying here was that as we saw ahead, a lot of problems that we felt that we would make a major attempt to turn those problems into opportunities, as we always had in the past.

Q In that respect, Mrs. Lawrence, was it your view at the time that the more difficult it was for your client to maintain its competitive position in the market during economically adverse times the more the client would come to you for the expertise in keeping that market through advertising?

A That is what -- that was what we hoped, and I guess that is what I believed at the time, Mr. Nemser.

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Q Now, would you look at the 1971 annual report and your letter to the stockholders dated January 25, 1972? Before I ask you a question on this exhibit, I would just like to go back to the 1973 annual report.

That letter would have been prepared by you, would it not, in about January 1974?

A About December.

Q December?

A Yes.

MR. SISK: If your Honor please, there is a little confusion. Can we get it clear?

THE COURT: He is talking about Exhibit 6, which is, I gather, the 1973 annual report.

A Yes.

THE COURT: And the answer to the question of Mrs. Lawrence was she prepared the letter in December 1973.

Q I ask you to look ~~in~~ at the next to the last page of the Plaintiff's Exhibit 6, 1973 annual report, and you will note there the auditor's report dated January 7, 1974.

Does that change your answer that your letter was dated in January 1974, in the 1973 report?

THE COURT: You didn't ask her that question. You asked her when she prepared the letter. She said she prepared it in '73. You didn't say what time the letter was

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published and sent out.

Q Will you look at 1971 annual report, please, in Plaintiff's Exhibit 4, and your letter to the stockholders? The year 1971 was one of economic problems, was it not?

A Yes, sir.

Q You make a statement in that letter which is dated January 25, 1972.

"We believe that WRG's favorable experience during the recent business ~~contracts~~ contraction suggests that primary advertising agencies like Wells, Rich, Greene are at least recession resistant and to a great degree recession proof."

Will you explain to the Court what you mean by that?

A What I meant by that was that at that time, in that year, the economy was difficult, but it was of course completely different than it was today, and what I meant was that a very sophisticated client who was interested in trying to acquire a greater share of the market would take advantage of a bad time to increase spending rates than to decrease spending.

THE COURT: Can you hear her, Mr. Sisk?

MR. SISK: It would help if she would speak up.

THE COURT: I can just bearly hear.

A I'm sorry.

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What I meant by that was that if you had a sophisticated client, like for example, Proctor and Gamble, in a simple economic slowdown Proctor and Gamble would take advantage of a simple economic slowdown to attempt to get more attention to their product and would spend more money rather than less, because they have many products that are very inexpensive, for example.

And during an economic slowdown products of that type would be attractive to people.

We have a number of clients who during that period saw the slowdown as an opportunity but also saw it, as for example as TWA saw it, where they had no choice, they had to continue to advertise no matter what.

But that was a very -- that was because the economic conditions were very simple in that time. That's what I meant by that paragraph.

Q But as you have testified before, Mrs. Lawrence, at the end of the year 1973, when you prepared the letter that we referred to before, you had great confidence in the continued growth of the company, didn't you?

A Yes, I have confidence in the continued growth of the company.

Q Turning to the exchange offer, when did the matter of acquiring stock by the corporation from the public stock-

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holders first come up or come to your attention?

A The first time that we considered it as a prospect for a -- as a solution to a problem for Wells, Rich, Greene was in August of 1974.

The first time that going private as a concept came to my attention really was when McCaffrey , McCall went private. That is the first time that it ever occurred to me that an agency could possibly go private.

And we discussed it at that time. We read the prospectus. But we did not apply the thought to ourselves.

THE COURT: When was that in terms of time?

THE WITNESS: That was -- your Honor, I'm not sure. That was last winter sometime.

But we first analyzed the prospect of going private along with about five other prospective solutions to problems which Wells, Rich had in August, this past August.

Q You used the word "we". Who comprised the "we"?

A The management of Wells, Rich, Greene, which consists of Mr. Colnar, who is in charge of financial planning, Mr. Jacobs, who is our treasurer, Mr. ~~Ogilvy~~ O'Reilly, who is in charge of acquisitions and the processibility of accounts, and Mr. Moss, who is the president of the company, and myself.

Q Who brought to your attention another agency

having gone private?

A It was in the newspaper.

Q Do you recall whether they used the same method of going private as you are proposing to do here?

A They made an offer to buy in all of the outstanding stock.

Q And did they get all of the stock in on the offer?

A Yes, they did.

Q All of it?

THE COURT: Mr. Nemser, please. What difference does it make? You have to deal with your case.

Q Now, at the time that you were considering this matter of going private, who proposed the use of the exchange offer method for Wells, Rich, Greene?

A That was rather an accident. We originally had hoped to pay all cash for the offering, but we had checked with our banks and discovered that banks were not lending cash for the acquisition of stock and that that would be impossible.

And right about that time Mr. Booke, who is one of our -- who is one of our advisors, an outside advisor -- he is in public relations expert in finance, financial public relations, happened to come by the office and he had a prospectus with him that he had been studying that was for

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another company, and he said, "Well, if you can't get -- can borrow all the money, perhaps you can make a very attractive offer by doing a combination of cash and debentures and offering a high rate of interest.

And we then investigated that possibility.

Q Did any of the other officers you mentioned discuss any other method of acquiring all the stock owned by the public? Did you ever discuss a merger?

A Previous to even contemplating the prospect of going private before it had even occurred to us to even think about going private, we had been in negotiations with another agency with the hope, with the passionate hope of being able to acquire the assets of that company, and we spent some time on that and were forced to stop negotiations because we were forced to reveal the nature of the negotiations, according to the SEC rulings.

We had to disclose that we were talking.

Advertising ~~Anticipating~~ business being the kind of business it is, with competitive accounts, you understand, you could see that that would pose an enormous problem.

So the minute it was disclosed that we were talking we had to cut it off completely.

And, yes, we looked into many, many solutions of the problems which Wells, Rich, Greene had before we came

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to the solution of going private.

Q When did White, Weld and Company come on the scene in connection with the exchange offer?

A Well, when we had talked out very thoroughly the idea of going private, which was for us emotionally a little upsetting because we liked being a public company, it took us a little while to kind of get over that hump and then we finally -- we ran out all the different figures that we could run out to see what we could afford and we called a board meeting in order to be able to discuss the idea in depth with our board before going any further, and before talking to the board I wanted to have the best possible opinion that I could get, an outside opinion that I knew would be absolutely objective, as to what would be the fairest price that we could make.

And the board meeting was scheduled -- let's see, I think it was for a Wednesday following Labor Day, and I called Paul Hallingby -- he is the head of White, Weld and Company -- and I asked him if he would mind coming to the office. He wasn't able to come that day but he did come the day following Labor Day, the day before our board meeting, and I discussed the idea with him then and asked him about the price, and I suggested that we would -- we felt that we could support a price of $3 cash and $8 in debentures and

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a 10 percent interest rate.

He said he felt that $11 was not -- was maybe a little high. He felt that 10.50 would be appropriate at the time and that the 10 percent was a very good one.

He made some suggestions. We had at the time felt that we would like to have had debentures perhaps funded starting after five years. He said that he felt they should be funded immediately.

And he had a few other suggestions. And he said that he was very much in favor of the offer and he would be happy to testify before our board.

Q You said it was the day after Labor Day, and according to my calendar that would be September 3, 1974.

THE COURT: This was a Wednesday, you said.

THE WITNESS: The board meeting was Wednesday or Thursday. The board meeting was Wednesday and Mr. Hallingby was there on Tuesday.

Q He was there on Tuesday, which would be the 3rd of September?

A Yes.

Q And your board meeting was the 4th of September, is that right?

A Yes.

Q And September 3rd was the first date upon which

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White Weld first became aware that Wells, Rich, Greene was considering an exchange offer, is that your testimony?

A That's right.

Q Now, let's come to the matter of this proposed deal with this other outfit that fell through because you have to disclose the preliminary agreement to the public.

This is one of the reasons you state in your affidavit for wanting to go private, that you have to disclose agreements in which there might be conflicting clients?

A That's right.

Q If this offer were to be completely successful, and if it were to be consummated, or if it would be sufficiently successful that the debentures would require the disclosure requirement, how would going private help you in connection with confidentiality?

A It would not unless the debentures are fully acquired.

Q Now, let's take it a step further. These various reasons that you have set forth in your affidavit and in the prospectus, this assumes, does it not, that you won't have any public stockholders left, there wouldn't be any public market, you wouldn't have to make any disclosures, isn't that correct?

MR. SISK: If your Honor please, may we have the

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reference to the paragraph of the affidavit to which Mr. Nemser refers?

THE COURT: Of course. I think what he is referring to, as I recall reading Mrs. Lawrence's affidavit, is that she had indicated that they would consider the prospects of a merger and that the fact that they had to publicly identify it was one of the reasons that they felt that going private was the best way to proceed at the present time.

That's the tone of the affidavit.

I don't know where that is.

MR. SISK: That's correct, your Honor. But I think Mr. Nemser has gone on to a new point and I'm not sure that it is in Mrs. Lawrence's affidavit.

MR. S. NEMSER: Well, let me indicate --

THE COURT: I'm sorry. I've lost both of you. I thought you were following up that question.

MR. S. NEMSER: Well, I am, your Honor, in the sense that I am taking that particular business reason and I am adding to it all the other particular business reasons which Mrs. Lawrence set forth in her affidavit and also --

THE COURT: Let's get the question.

Q Let's approach it this way, Mrs. Lawrence. The Board wants to go private, doesn't it?

A The board believes that the only way to solve th

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problems that Wells, Rich, Greene has is to go private.

Q Now, all the reasons that you set forth in the prospectus why the company should go private, they don't become operative at all unless you have all the stock, isn't that right?

A That's correct.

Q So that unless the company accomplishes its objective of acquiring all the stock, all these reasons don't come into being, isn't that right?

THE COURT: I don't understand that question. Maybe Mrs. Lawrence does, but I don't.

A Well, one of -- I mean there are a number of reasons for being private, your Honor, and most of those reasons, it is true, would not come into being unless the company was private.

But there are a few that would not.

For example, we would have greater lattitude in terms of ~~sale areas~~ salaries.

Q If you were still a public corporation?

A If we had very few shareholders.

Q What do you call "a few"?

A Well, I mean, it is so long as you have some sort of market. White, Weld has offered to guarantee to provide a market for the shares that are left from this

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offering, and so assuming that there were two, 300,000 shares still left after this offering, they would be over-the-counter. There would be a market for them.

Q And you feel at that point that you could then increase ~~sale areas~~ salaries to any extent that you deemed appropriate without worrying about the public stockholders and their earnings, is that right?

A No. I think it would be easier to satisfy a few stockholders with earnings than I do a great many stockholders. And, believe me, that isn't easy either.

Q Let's turn to the matter of confidentiality. If you have about 300 stockholders in the public, are you going to send them an annual report?

A I would do what was legally correct.

Q Supposing you had that number of stockholders still remaining outstanding that required you to comply with public disclosure to these stockholders, would you have accomplished your benefit, or what you consider to be the benefit of going private with respect to confidentiality?

MR. SISK: Objection, your Honor. There is no basis for this assumption.

MR. S. NEMSER: Your Honor, I think there certainly is, because one of the main premises that has been set forth as the reason is that they would get the benefit if

they went private of not having to disclose their clients, not having to disclose any acquisitions, and also it would be beneficial for them for even confidentiality to their own personnel.

THE COURT: Would you read the question back, please.

(Question read.)

THE COURT: The objection is overruled.

A Until we acquire all of the debentures, which we would make a great effort to do, we would naturally do whatever was legally required of us in terms of giving out information.

Q How many years do you contemplate it would take you to acquire the debentures?

A I don't speculate, Mr. Nemser. I cannot possibly speculate. I don't know how much business I would have in two or three or four years. I don't know what my earnings would be. That would be a speculation.

Q Well, do you figure it would be at least three years?

A I don't know, Mr. Nemser.

Q Well, you have a ten percent sinking fund, don't you?

A At the moment it appears that at the rate that we

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have guaranteed that we will buy in debentures, it would appear that they would come in within seven years.

Q So that you anticipate that if all these debentures were issued under this offer, $11,000,000 principal amount, that you would in essence still be public for seven years, isn't that correct?

A I don't know that, Mr. Nemser.

Q No?

A I would hope it would be a shorter time?

Q Li ke five years?

A I don't know, Mr. Nemser.

Q Like four years?

A I don't know, Mr. Nemser.

Q You don't know.

MR. NEMSER: Mr. Sisk, may I ask that you furnish the witness with a copy of her affidavit?

MR. SISK: Yes. (Handing)

Q Mrs. Lawrence, would you turn to paragraph 18 of your affidavit?

A Yes, sir.

Q You state there in the first sentence, and I quote:

"The principal advantage to options no longer related to a public market but geared to book value is that

they would truly reflect the increased worth of the company as earnings increased its net assets."

Do I take that to mean that you consider book value to more truly reflect the worth of this company than a public market? Is that correct?

A Well, the book value does not have the public multiple, which is a gambling aspect of it.

THE COURT: I didn't hear that.

THE WITNESS: The book value does not have the multiple that one gets in the public market, which has a gambling aspect to it.

Q So you consider, as you say, that that would more truly reflect the worth of the company, is that right?

A Yes, in other words, if the company makes -- let's say the company does not have an outstanding year but it makes just a little bit of money, the book value still increases, whereas the multiple would probably decrease because you were showing a decrease in earnings.

Q Are you offering the public stockholders book value here? You are not, are you?

A No, sir.

Q But you want to give options to employees geared to book, don't you?

A Yes, sir. I do indeed. I must.

Q You had at one time in this company a stock purchase incentive plan, isn't that right?

A Yes. We no longer have it.

Q All the shares went out that were allowed under that plan, is that right?

A Yes, sir.

Q Like about 83,000 shares?

A Yes.

Q Will you tell the Court generally what the terms of this particular plan were? I mean it was geared to the greater of 40 percent of market or consolidated book value, wasn't that the gist of it?

MR. SISK: Objection, your Honor. The plan is in evidence. It is one of the documents that Mr. Nemser has marked. I don't think it is appropriate to pursue this.

MR. NEMSER: Your Honor, I ask this for this reason. That in Mrs. Lawrence's affidavit --

THE COURT: Where?

MR. S. NEMSER: -- at paragraph 26 in her affidavit she in substance, using her words, considers that the statement that I made in my moving affidavit was ridiculous.

I just would like to explore exactly how ridiculous it is.

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Q Let's go to it this way. You say that you could not give options geared to book if you had a public company, is that right?

A I don't believe I can give different kinds of options to different kinds of stockholders, you know. I mean I can't give -- I can't pay one group of stockholders one price and another group of stockholders another price.

Q We are talking about your employees in your offices. That's who you want to give these options to at book, isn't it?

A Yes, sir.

Q Will you tell the Court why you couldn't do that if you are a public corporation?

A Well, it is my understanding that is against the law?

Q Oh, it would be?

A I mean I don'tbelieve you can pay two different prices to two different stockholders.

Q I'm not following you, Mrs. Lawrence. You had a stock incentive plan, did you not, where there was a possibility of giving options geared to consolidated book value, isn't that correct? Your stock purchase incentive plan had that, didn't it?

MR. SISK: The same objection. Mrs. Lawrence is

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not a lawyer.

THE COURT: I am not sure I understand, but I think that -- I gather that what Mr. Nemser is attempting to do is he is analyzing paragraph 26 and utilizing a stock option plan that I assume Mrs. Lawrence had offered to her employees at a time when the company was public, and therefore he is attempting to attack the substance of this paragraph.

If I am correct in that, then your objection is overruled.

A My understanding is that plan is no longer legal.

Q Who told you that?

THE COURT: It doesn't matter who told her that. That's according to her best understanding. And if it is not so, then you can state that. Now, let's move on.

Q If you had the debentures outstanding in this company, and these are subordinated debentures, as I understand that they would be if issued, you indicate that you want to be able to increase ~~sale areas~~ salaries substantially and you won't have to worry about public stockholders. Is it your testimony that you won't worry about these public debentures holders who were formerly your stockholders?

A Mr. Nemser, there is nothing in my past history that would suggest that I have ever done anything unethical

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or that I would not support any bond that I have put out.

Q Well, now, if you had stockholders remaining in this company, public stockholders, let's assume that this offer doesn't get you a hundred percent, what would you do about these stock options you want to give? You couldn't give them, right, based on book? That's your testimony?

A If the offer is not totally successful, we will provide a market for the stock that is still remaining and we will determine then precisely how to go about acquiring what we finally want to acquire, which is private status. We have not made that decision yet.

THE COURT: Aren't we really on this level wasting time? If your assumption is that the offering is -- your assumption has to be that the offer is going to be successful. That's why I'm here.

MR. NEMSER: That's right.

THE COURT: So, let's operate on the basis that the offer is going to be successful, because otherwise it seems to me you have no point in being here.

MR. NEMSER: Your Honor, this is what we have to look at in the context of the legal aspect. This is known none in actual terms, as a squeeze out. If they get a high enough percentage on this first round, then they go and finish them

off on the second round.

THE COURT: All right. But the point is that your theory, I would assume, has to be that they are going to be successful. So why would getting involved in questions as if they are not going to be successful?

MR. NEMSER: I would say this, your Honor. That I believe we have just got one key answer in this respect, your Honor. I think Mrs. Lawrence now says that then they would go and finish -- go private in the next step, fully private. And in that respect, your Honor, I ~~saw~~ say that the entire value of this prospectus is false because they go on the premise that this is so-called voluntary and you are going to have a market here and you are going to have --

THE COURT: All right, Mr. Nemser. I get the point.

Save that for later. Let's proceed.

THE WITNESS: Your Honor, that is not what I did say, though.

MR. SISK: That is, what I was rising to object. I don't think Mr. Nemser correctly characterized Mrs. Lawrence's testimony.

MR. S. NEMSER: Your Honor, I think her testimony will speak for itself. I won't comment on it.

MR. S. NEMSER: I have no further questions of

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this witness.

THE COURT: Mr. Sisk.

MR. SISK: May I have just a moment, your Honor?

(Pause.)

MR. SISK: No questions.

THE COURT: Thank you.

You may step down.

(Witness excused.)

THE COURT: Call your next witness.

MR. NEMSER: Mr. William Brian Little, please.

Your Honor, may I venture this fact: That plaintiffs have subpoened certain documents from White, Weld and counsel for White, Weld declined to show me those documents until the witness took the stand. So I wonder, your Honor, if I can have just a few minutes to look at these documents.

THE COURT: All right.

Swear the witness in.

xx W I L L I A M B R I A N L I T T L E, called as a witness by the plaintiff, having been first duly sworn by the Clerk of the Court, testified as follows:

MR. WALTON: May it please the Court, we are counsel to White, Weld and Company. Mr. Little has been subpoenaed and he appears here by subpoena. There was also

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subpoena duces tecum. Mr. Little has the documents which were subpoenaed, including a document that is of a confidential nature. If I may approach the bench, I would like to discuss it with your Honor.

THE COURT: All right. You may.

(At the bench.)

MR.WALTON: Your Honor, there is a document showing a number of shares that were tendered as of a recent date. We don't have the one showing today's date. That of course, is highly confidential and would be of great interest to the financial reporters.

Somehow it should be marked, it seems to me, so that it doesn't become a matter of public record.

THE COURT: All right. I think so.

For the purpose of this hearing we can have this marked and sealed.

MR. WALTON: It doesn't seem to me that it is ~~relative~~ relevant either to the plaintiff's case.

THE COURT: That's another question. We will deal with that. Insofar as it is admitted into the record, we will have it marked and sealed.

MR. NEMSER: Do you want to mark that as a Court Exhibit 1?

THE COURT: Mark as Court Exhibit 1 for identification.

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(Court Exhibit 1 was marked for identification.)

(Discussion off the record.

THE COURT: We are going to adjourn for lunch and return at 1:30.

(Luncheon recess.)

AFTERNOON SESSION

1:30 p.m.

W I L L I A M B R I A N L I T T L E, resumed.

THE COURT: All right, Mr. Nemser, let's proceed.

DIRECT EXAMINATION

BY MR. NEMSER:

Q Mr. Little, your first vice president of White, Weld, is that correct?

A Correct.

Q Now, has Wells, Rich, Greene been an investing banking client of your firm since the spring of 1968?

A We refer to it as an investment banking client. Yes.

Q And your firm acted as the underwriter with respect to the 1968 and 1971 public offerings?

A We acted as the managing underwriter of those two offerings, that is correct.

Q Did your firm in 1968 recommend to Wells, Rich, Greene to go public?

A We had discussions with the company after I believe it had made the preliminary decision to go public.

We had discussions with them in order to ascertain some of their details of their business and all, and after that we di recommend that they go public.

Q Now, with respect to the offering price under the 1968 public offering, what factors, if any, did your firm apply in determining the offering price?

A We analyzed the company's record to date, which was relatively short for a company going public. They've been in business since 1966. We looked at the record they had accomplished up until the time of the offering, and the record was not only that of their financial record but the record in terms of attracting and signing up new advertising clients for the company.

We also looked at the future prospects for the company and determined in our mind what the outlook for futu billings and earnings growth were.

Then we looked at a representative group of public advertising agencies at that time and assessed the record of Wells, Rich, Gree.. ..th in terms of past and future against that of the public ~~agency~~ agencies already.

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Q And what was your conclusion, it was your firm's conclusion at that time, that the offering price should be $17-1/2 per share, is that correct?

A That is correct.

Q Let us turn to the 1971 public offering. By that time the common stock had been listed on the American Stock Exchange, isn't that correct?

A That is correct.

Q At the time of the 1971 offering itwas contemplate that the company would then transfer its listing to the New York Stock Exchange?

A The company's stated intention on the prospectus was that if it met adequate distribution it would apply for listing on the New York Stock Exchange.

Q Will you tell the Court what the factors were applied by your firm at that time in determining the offering price of 21-3/4?

A Well, once a market price has been established for a company, and it has a subsequent offering, the price is typically determined based on the last sale prior to the stock being offered, the stock that is being offered under the underwriting.

I don't recollect whether or not it was offered exactly on the last sale. It might have been somewhat

below, or it might have been somewhat above, but it was very much in line with the market prevailing at the time.

Q Did your firm recommend in 1971 that additional stock be sold to the public by its officers and directors?

A I believe the officers and directors probably evidenced an interest in selling more stock and working with us. As their ~~settlement~~ investment banker we concluded at that time it was an appropriate time to have an offering.

Q Am I correct that you and Paul Hallingby, Jr. of your firm were the two officers in charge of the work being done by White, Weld?

A You are.

Q When is the first time either you or Mr. Hallingby was contacted in relation to the matter of Well, Rich, Green proposing to become a private corporation?

A As Mrs. Lawrence indicated before, she spoke with Mr. Hallingby about having a meeting. As she recollects it was on Labor Day. I don't know, because the conversations were between the two of them.

In any event the meeting took place on September 3, 1974.

THE COURT: Mr. Nemser, this is a case where we are at the 11th hour. If I might say, I don't think you

ought to be directing your proof to show how this going private is going to defraud the public, but, if it can be shown, that it is a plan or device in violation of 10(b)(5). I don't know. I don't think White, Weld or Mr. Little are defendants in the matter, and I don't understand. You haven't got much time.

MR.NEMSER: Your Honor, I am coming to this right now.

Q On September 4, 1974, did your firm submit an opinion letter to Mrs. Lawrence as chairman of Wells, Rich, Green?

A That is correct.

Q I show you a document dated September 4, 1974, fro Paul Hallingby, Jr. to Mary Wells Lawrence, Wells, Rich, Green, Inc.

Is this a photocopy of the letter?

THE COURT: I s that attached to the affidavit?

MR.NEMSER: Yes.

A That's the letter.

MR. NEMSER: I offer this in evidence as Plaintiff's Exhibit 25.

MR. SISK: No objection.

(Plaintiff's Exhibit 25 was received in evidence.)

Q Will you look at the third paragraph of that letter with respect to the purchase and sinking funds of the proposed debenture, and will you look at the last sentence of that paragraph. Is that provision part of the indenture that was proposed with respect to the issuance of these debentures?

A I believe so.

Q I didn't hear your answer.

A I said I believe so, yes.

Q Did you and your firm read through this prospectus?

A We had a hand in preparing the prospectus.

Q In preparing it?

A That is correct.

Q Will you tell the Court where in this prospectus it is stated with respect to the terms of the debenture that the company would have the right to double the purchase fund and sinking fund in any given year and such right would be cumulative?

A May I have a copy of the prospectus?

Q Certainly.

A I don't find it right now.

MR. WALTON: The document is in evidence and it speaks for itself. The provision which is actually a more

generous provision is noted on pages 4 and 5, sinking fund and redemption.

Q Will you turn to page 22 of the prospectus under the heading Sinking Fund. In the second paragraph it refers to the sinking fund and the right to go out in the market. Is there any provision there provided or disclosed to the stockholders that there can be a right to double the purchase and sinking fund in any year?

A It is not stated in that section.

Q And that is the sinking fund section in this prospectus, isn't it, in the description?

MR. SISK: Objection, your Honor.

MR. NEMSER: That speaks for itself.

MR. SISK: It does, and Mr. Nemser has had his attention and the Court's attention has been called to the heading on pages 4 and 5, Sinking Fund and Redemption.

THE COURT: I agree. I think it would be sufficient to call my attention to various parts you think are material. The document is in evidence. There is no question that your questions are fair, because if you allege as admissions that you refer to are somewhere else in the document then I think that is going to give the defendants an opportunity to bring that to my attention as well.

MR. NEMSER: Your Honor, the point on that is --

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THE COURT: I don't need that now. I think I have the point. The point seems to be plain enough.

Q This letter of September 4, 1974, is there any statement in the prospectus that White, Weld had furnished a letter of opinion to the company?

A No, there is not.

Q Did you not think as the investment banking firm Wells, Rich, Greene that that should have been disclosed as important information to the stockholders?

A We might have given it passing thought but the conclusion was there was no need for any reference.

Q Your firm first, as you mentioned, became aware of this situation on September 3rd. What did you do between September 3rd and September 4th in preparing this opinion letter?

A Mr. Hallingby returned from his meeting with Mrs. Lawrence and her legal advisors, discussed it with me, discussed it with several other officers within White, Weld, to determine what the thoughts of various people in the various different functions at White, Weld about a transaction like this.

And also very importantly to determine what the value of the package of cash and securities should be to offer to the shareholders. We went through some analysis of

debentures and terms which should be included in debentures. On Wednesday morning, September 4th, we had a formal commitment meeting at White, Weld at which time we discussed this with several senior officers of the firm. This is a procedure we always go through entering into any transaction.

The committee functioned in its normal fashion, offered some suggestion about how the deal should be structured, and approved it.

After that time, Mr. Hallingby and I together drafted this letter and delivered it to the company's board meeting.

THE COURT: Mr. Nemser, I am distressed to keep interrutping your examination, but quite frankly I don't see what Mr. Little or White, Weld has done that is pertinent here other than the value that they recommended, as compared with whatever recommendations you brought out in terms of the value they suggested be put on the offering in 1971 and 1968. I think that has some bearing possibly on this case, but I really can't see how long it took to get the opinion letter up has any bearing on this case at all.

MR. NEMSER: Your Honor, there are the following things on that. First of all, Judge Weinfeld has held

and granted a preliminary injunction where the full opinion letter wasn't even appended to the document by which the stockholders --

THE COURT: I am not directing myself to that. The fact there was an opinion letter, you brought that out. But what difference does it make -- at least it seems to me that Mr. Little didn't spend two months in getting this out rather than a couple of days, I don't see how that has any bearing on this case at all, the time he spent to get the opinion letter out. It is totally irrelevant to the issues here.

Q Will you turn to page 7 of your affidavit? Will you turn to the last paragraph?

MR. WALTON: Paragraph 7?

MR. NEMSER: Paragraph 7.

Q You indicate there that rather than using Mr. Belfer's method of intrinsic value you considered a more appropriate method was to test the value as to the price paid by the company for another company's shares and the premium over market price that such price reflects.

Now, is that the principal criteria which White, Weld used in determining whether or not this offer was fair?

A No.

Q What did you use?

A Do you want to hear all the criteria?

Q What was your principal criteria?

A I'd say the principal criteria was that the offer exceeded the book value by a premium and it exceeded the tangible book value by a significant premium.

Q You are saying that the offer exceeded the book value?

A That is correct. The face amount.

Q In what?

A Excuse me, the face amount of the offer, that is correct.

Q The face amount?

A Yes, sir.

Q You advised the corporation that this debenture would sell at a discount of 25 per cent, didn't you?

A That is correct.

Q So what is the meaning of using face value?

A Because if the recipient of the debenture holds it for its life he will receive an amount equivalent to the principal amount.

Q Is that one of the principal features that you used in determining the fairness of this deal? Is that your testimony?

A Yes, sir.

Q Isn't it a fact the very intention of this debenture was to permit the company to go out in the open market and buy this debent-ure up at a discount, a substanti discount, and apply that towards the sinking fund up to a minimum of a million dollars in actual cash layout? Isn't that right?

A I am sorry, would you repeat your question? I didn't hear the word -- was it the company's what?

THE COURT: Read it back.

(Question read.)

A That was not the intention.

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Q Not the intention, you say.

That was not your firm's intention or the corporation's intention?

A Clearly if the debentures sell at a discount from the par, thatwould be the route the company would take to satisfy its sinking fund requirement, but it was not designed by us or by the company to have it sell at a discount. As you asked me.

Q I show you a copy of a letter dated September 25, 19 --

THE COURT: Does that have a number?

MR. NEMSER: No, there will be a new one, your Honor.

MR. WALTON: Your Honor, I haven't objected becaus it is my witness. Isn't it appropriate for Mr. Nemser to show counsel the document?

THE COURT: No, that isn't appropriate. Mark it for identification.

MR. WALTON: I have no way of knowing what you ar showing him, Mr. Nemser.

THE COURT: What are you going to ask Mr. Little about?

MR. NEMSER: I am going to ask him whether or not White, Weld geared the debenture provision so that it

would sell at a discount and that they would have a right to go on the market and pick up a substantial amount.

xx

(Plaintiff's Exhibit 26 was marked for identification.)

THE COURT: Are you asking him to identify that letter?

MR. NEMSER: I would like to have him do that.

THE COURT: I will let him identify the letter.

Q I show you Exhibit 26. Is that a copy of a letter that you sent to Mr. Jacobs of -- Frederick L. Jacobs of Wells, Rich, Greene?

A Yes, it is.

Q Did you give Mr. Jacobs in the opinion of your firm therewas a reasonable assumption the debentures would sell at approximately 75 per cent of their principal amount following the exchange offer?

MR. WALTON: I object on the ground it has been asked and answered.

THE COURT: I don't believe that you have a right to make an objection in this case.

Secondly, when you are objecting, you should rise.

Q Isn't that what you told Mr. Jacobs in the letter?

A Would you repeat the question, please.

(Read.)

A That is what the letter says.

Q That is what you said, isn't it?

A That is correct.

MR. NEMSER: Would you mark for identification Plaintiff's Exhibit 27.

xx (Plaintiff's Exhibit 27 was marked for identification.)

MR. SISK: May I see the document first?

MR. NEMSER: Yes.

MR. WALTON: I suggest, your Honor, that is an internal document, not intended for dissemination to the general public. It might be more appropriate to mark that confidential as well.

MR. SISK: I agree with that, your Honor.

MR. WALTON: I don't believe Mr. Nemser has objected to that.

MR. NEMSER: Your Honor, I would like to ask a few questions on the document.

THE COURT: Well, I think if it is going to be in the document, I suppose what we have to do is to have it offered here.

MR. WALTON: Your Honor, there are portions that

are not sensitive. Unless the questions get into an area that is sensitive, possibly it will be all right.

THE COURT: All right, fine. Why don't you just signal, you signal to Mr. Sisk when you get to something sensitive. We will have the rest of the questions out of -- in camera, either at the side bar or in the robing room.

XX

(Court's Exhibit 2 was marked for identification.)

THE COURT: I think if you are going to ask Mr. Little questions about that, you ought to show him a copy of it.

MR. NEMSER: I intend to, your Honor.

Q Who is Johnathan Stern of your firm?

A He is a member of our Syndicate Sales Department. He is a vice president of the firm, I believe.

Q Did he prepare this document, do you know?

A He and I and an associate of mine in the corporate finance department prepared it.

MR. NEMSER: Do you consider references to the sinking fund as confidential?

THE COURT: Why don't you ask the question. You can ask the question.

Q It is here stated that "One of the most meaningful

and important features of the Debentures is a unique Sinking Fund which, starting in the first year, is designed to provide for the rapid retirement of the Debentures. Whereas a conventional sinking fund requires annual payments based on the principal amount of the bonds, this Sinking Fund calls for WRG to ~~expend~~ spend 10 per cent of the original principal amount of Debentures in cash ~~underlined~~ each year regardless of what price is paid to retire debentures. Refer customer to page 5 of the Prospectus. For instance, if the initial principal amount of Debentures outstanding is $10 million, WRG must ~~expend one~~ spend $1 million each year in retiring the Debentures. If the Debentures sell in the open market at an average price of 75 per cent, WRG would retire ~~thus~~ $1,330,000 of Debentures per year (assuming it is able to purchase such amount in the open market). Again assuming the Debentures sell at an average price of 75 per cent, they would have an average life of 4.7 years, a yield to maturity of 18.3 per cent and a current yield of 13.3 per cent. Because of the expected short average life of the Debentures brought about by this Sinking Fund, we believe that if all other aspects were equal, WRG's Debentures would sell at a higher price than similar quality, but longer-term debentures."

Isn't it a fact that under this unique sinking fund, it was designed to terminate the issue of this -- the

life of this issue of debentures far faster than its 10 year full maturity, isn't that right?

A The purpose of the sinking fund was to give value to a debenture primarily by making it shorter in life and by making it a rapid retiring sinking fund.

Q And where they could go out and buy it at the discount, they would, and if it was selling less than par, th would still put the million dollars in the year, is that right?

A That's the way it works.

Q So that in your estimation at that time, you didn't consider that these debentures were going to have a fu work out to maturity, did you?

A They certainly will if somebody is not willing to sell them.

THE COURT: Mr. Nemser, I know you are more comfortable this close but take your place back where you belong.

What is that document, by the way?

THE WITNESS: The document was prepared, as I said, by myself and an associate of mine in corporate finance and an individual in our Sales and Syndicate Department. It is a customary document that goes out with any offering or exchange offering that we handle. It goes out to our sale

managers and they then have a summary of the deal in order to talk to their salesmen and talk to customers about it.

Q Turning again to paragraph 7 of your affidavit in which you use the test of value of one company, the price paid by one company for the shares of another, do you consider that that would be the same situation as a corporation going out and seeking to buy all of its own stock?

A Well, what we tried to set forth here was an approach to determining value which we find as investment bankers would be much more meaningful to us than the approach was which given as quote intrinsic value. This is the type of procedure we enter into in determining prices, either for one company to buy another company's shares or for a company to buy its own shares.

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Q You or your firm makes no distinction, is that correct, between a corporation buying its own stock or a competitor going out to buy stock in another company, is that your testimony?

A I don't think in and of itself just that criteria as you state it, we don't, no.

Q Prior to the September 4, 1974 opinion letter of White, Weld, had your firm acted during the previous year from that date as a dealer-manager or investment banking advisor to any corporation other than Wells, Rich, Greene in connection with the tender offer by a corporation to acquire all of its own shares held by the public?

A During the twelve months preceding --

Q Yes.

A Yes.

Q At the time that the opinion letter of September 4, 1974 was prepared by White, Weld -- I mean for Wells, Rich, Greene, did you know that there would be a surplus limitation on these new debentures for the payment of principal and interest?

A No, that's a point that came to our attention as we worked on the filing of the prospectus before we filed the prospectus with the SEC, it became apparent to us.

Q Did you ever give a follow up opinion letter to

Wells, Rich, Greene after you found out about the surplus limitation?

A We would give a follow up letter if something in our previous letter should be changed. If the terms should be changed based upon new evidence and new information coming to light, wewould then give a follow-up letter.

Q Did you give one here?

A No, we did not. Except the letter you see to Mr. Jacobs regarding the discount with respect to the bonds.

Q This particular surplus limitation, is that unique in your experience for a debenture?

A I think that the law would apply to any company, so I don't think why it would be unique. This is a test that any company is put to that issues debentures.

Q Is it your testimony that if there is impaired capital, but the corporation isn't insolvent, that it can't pay interest on debentures?

A I am sorry, would you restate that question, please.

MR. S. NEMSER: Please read the question back.

(Question read.)

A As I said, this is a test that is put to any company issuing debt. So I don't understand the question as to whether or not it is unique.

Q I don't think you have answered my question, sir.

A I don't understand it. I'm sorry.

Q The corporation has impaired --

THE COURT: Directing your attention to the last question, in which there was no word unique. All right.

Q I am not quite clear as to what your answer to my question is.

THE COURT: He hasn't answered your question.

MR. S. NEMSER: I don't think he has.

THE WITNESS: I am still not clear what the question is. I am telling you what we have stated here is in response to stating what this company or any company is bound by as to the law.

Q Do you mean to say that any debenture in the land can never pay -- that a corporation can't pay any interest on any debenture in this country where there is impaired capital but the company isnot insolvent?

MR. SISK: Now, if your Honor please, Mr. Little is not a lawyer and I believe these questions go to legal conclusions to be drawn from the state laws affecting corporations in each of the 50 states. I think it is an improper question to put to this witness.

THE COURT: Well, I don't think -- I don't think it is improper on that ground, Mr. Sisk. I gather that what

Mr. Nemser is doing, he indicates that this -- he is getting the question from what Mr. Little has stated in his affidavit. I assume that. And he is probing that but it does seem to me that the question of what Mr. Little feels about it one way or the other, I don't think it is important to this hearing.

MR. S. NEMSER: Your Honor, in that respect, if I may, the point I'm trying to make is that, number one, there was no disclosure to the stockholders of Wells, Rich, Greene --

THE COURT: And you are also trying to make the point, I gather, that some of the advice and the bases on which Mr. Little has made various assumptions are incorrect. But it doesn't appear to me that you need to get it in this way. I have his statement. If it is not an appropriate one, you can bring it out in a memorandum.

Q Your firm indicated in the prospectus that if all of the common stock were not acquired by Wells, Rich Greene on this exchange offer, your firm was making an over-the-counter market, is that correct?

A Correct.

Q Supposing there is a very, very slim number of shares left. Will you be able to make an orderly over-the counter market in the stock?

A We will attempt to.

Q You would attempt to?

A We make markets in many issues right now, some of them have many shares outstanding, some have very few outstanding.

Q Would you say that there would be a true market in that situation over the counter?

A What is a true --

THE COURT: I don't think that's going to help me because I don't understand what Mr. Little means by few and what you mean by many. If you give me some concrete figures on what you are talking about when he can make a market and when he can't, then I think I will be helped by that.

Q Supposing there was only 50,000 shares all told left outstanding, not all of which could be traded necessarily.

Could you make a reasonably true market in this stock?

A You are saying 50,000 shares left outstanding?

Q In the public.

A Yes. We could make a market in shares like that.

Q Could you make a fair market?

A What do youmean by fair?

Q You wouldn't have a liquid market, would you?

A What do you mean by liquid?

Q Do you know what the term liquid market means?

A I do.

Q Will you tell the Court what it means?

A It is not determined by 50,000 shares outstanding. It is determined by how many people want to buy and how many people want to sell.

Q Usually all shares outstanding don't reach the market place, isn't that right?

THE COURT: What was that question?

Q Usually all shares that are outstanding don't reach the market place, isn't that right?

A Don't reach the market place?

Q That's right.

A What does that mean?

Q A percentage of your oustanding really forms a float, isn't that correct?

A That's correct.

Q Supposing you have 50,000 shares spread out over the country, remnants left--

A In the float?

Q All told. You would have a percentage of that possible as your float, wouldn't you?

A Depends, depends how much interest there is in

buying or selling that stock.

Q But you couldn't say right now what the case would be in that event, wouldyou?

A In which event?

Q If you had 50,000 shares spread all over the country, you couldn't tell whether you would have a liquid market and a reasonable flow, would you?

A I will go back and say what I said before. The liquidity of the market is determined by the number of people interested in buying the stock and in selling it. You can have a liquid market in 50,000 shares moreso than in a market for a million shares if there are more people interested in buying and selling the 50,000 shares.

Q You don't really know in this situation whether you would be able to have it, isn't that right?

A That's right.

Q You have no way of knowing.

A I don't have any way of knowing.

Q And these stockholders with only 50,000 shares left wouldn't be getting any report directly, would they?

A I don't know that that's the case. The prospectus doesn't say anything about when reporting stops as to the number of shares still outstanding.

Q It doesn't?

A It doesn't.

MR. S. NEMSER: Your Honor, I have no further questions of this witness.

xx CROSS EXAMINATION

BY MR. SISK:

Q Do you have before you Mr. Little, the document marked Plaintiff's Exhibit 26, your letter to Mr. Jacobs of September 25th?

A I don't have that one, no.

MR. SISK: Your Honor, may Mr. Nemser give him that.

THE COURT: Yes. Do you have a copy of it?

MR. S. NEMSER: That is the only one we have, your Honor. Mr. White, Weld produced it.

Q Mr. Nemser asked you a number of questions about the second paragraph. I would like to ask you about the third paragraph, where there is a reference in the second sentence to one of the factors that entered into your thinking, and that was described as the Federal Reserve Board's position with respect to the prime rate.

Could you tell us what you meant by that?

A Well, that's the principal determinant, or one of the principal determinates of where interest rates are in general, and the Federal Reserve which tightens up on the supply of money is an important determining factor in what interest rates are to go to, either up or down.

Q What is the relationship of what the interest

rate is to what the debenture is likely to trade for, if any.

A The interest rate, meaning interest rates in general?

Q Yes, sir.

A If interest rates were to go up all existing debt securities would trade at lower prices whereas if interest rates decline, existing debt would move up.

Q What has actually happened to the interest rate in general since you wrote your letter of the 25th?

A Interest rates in general have come down quite dramatically.

Q If interest rates continue to go down, would the debentures be likely to trade at a smaller discount?

A That's correct.

Q At a certain point is it possible that the debentures would actually trade above their face value?

A Certainly.

Q Is that what you meant by "You understand of course, that the actual selling price could vary materially from our estimate if there should be a material and unforeseen change in any of these external factors"?

A Yes.

Q Do you have before you Plaintiff's Exhibit 25, which

is the letter of September 4th, attached to your affidavit?

A Yes.

Q In the second paragraph of that letter you state "We believe this package represents fair value for Wells, Rich, Greene shares ~~fair value~~ in light of stock market conditions, the lack of investor interest in Wells, Rich, Greene stock and ~~stocks~~ of advertising agencies in general, current interest rates and other relevant factors."

Mr. Little, is one of the factors, that White, Weld considered in determining what the, or in recommending to Wells, Rich what the exchange offer should be how the offer would be received by the shareholders?

A Certainly.

Q How has it been received?

A I would say based upon the evidence to date it has been received extremely well.

Q Can you detail for us so much of that evidence as is not confidential?

A Well, the evidence comes to us from a variety of sources. One is the level of activity in the stock since the announcement of the offer, the trading volume. The trading volume through last Friday was approximately 870,000 shares, which is quite significant compared to where it was trading before, and quite significant compared with the existing float of the stock.

This indicates that a lot of people have been willing to sell the stock as it has risen in price, in anticipation of this exchange offer. Also it indicates to us that the people who have bought the stock at these prices are buying it in anticipation of actually tendering it, exchanging it in the offer.

That, coupled with conversations and knowledge we have about other brokerage firms who are engaged in the arbitrage activities, how much stock they have, how much stock they have actually told us they intend to exchange here, are all signals to us this offering is going extremely well.

THE COURT: Mr. Sisk, isn't that really irrelevant. If the plaintiff is right, and there are material misrepresentations or there is a plan or device to defraud the stockholders which has been kept from them, the fact that they are operating without full information, isn't that irrelevant?

MR. SISK: I think it goes, your Honor, to among other things, the weighing of the hardships which I believe the Court will want to do in evaluating this motion on behalf of the plaintiff.

My position is to hold back this offer is going to work a very substantial hardship on literally hundreds of

thousands of people -- people who have traded hundreds of thousands of stock and I believe it also bears on whether Mr. Kaufmann, who holds this 100 shares really represents anyone other than Mr. Kaufmann.

MR. S. NEMSER: Your Honor, may I make one comment?

THE COURT: No, don't interrupt Mr. Sisk's examination.

MR. SISK: In fact, your Honor, I really only have two more questions of the witness and one of them is a question I would like to ask him and get an answer in camera.

THE COURT: All right.

Why don't you ask the question -- or both questions, in camera?

MR. SISK: Only one.

THE COURT: Then ask the other one.

Q Does White, Weld still think the exchange offer is a fair one?

A I would say we think it is even fairer now than when we first recommended it.

MR. SISK: Now, your Honor, my last question.

THE COURT: All right, I think we can do it here if Mr. Little will understand it is in camera.

* * * * *

page 117 follows, having been released from in camera treatment

(At the side bar in camera.)

Q Could you tell the Court how many shares have been tendered as of the latest count today?

A The reason for this being given in secrecy is that this is insideinformation which if the market knew about it would give them very real tangible evidence about the success of the deal.

As of lunch time, about 480,000 shares had been offered in exchange, had been tendered.

Q Do you have any indication of how many additional shares are likely to be tendered before the end of the day?

A Some of that is evident by affidavit, some of it is evidenced by conversations we had. I would say another 550 to 600,000 shares we feel quite confident.

Q Does that make a total --

A A million, million, one.

Page 118 follows

hpe Little - cross 118

(In open court.)

MR. SISK: No further questions.

REDIRECT EXAMINATION

BY MR. S. NEMSER:

Q What has been the current trading price of the debentures on a ~~one issue~~ when-issued basis?

A I believe last Friday, around $70 or 70 percent on a ~~one issue~~ when-issued basis.

MR. S NEMSER: Your Honor, I have no further questions.

THE COURT: All right, Mr. Little, thank you very much.

Mr. Reporter, that portion of the testimony will be sealed.

All right, call your next witness.

F R E D E R I C K I. J A C O B S, called as a witness by the plaintiff, having been first duly sworn by the Clerk of the Court, testified as follows:

DIRECT EXAMINATION

BY MR. S. NEMSER:

Q Mr. Jacobs, are you a director, Executive Vice President - Administration, secretary and treasurer of Wells, Rich, Greene?

A Yes.

Q Will you tell the Court what your duties are briefly as vice president, Executive Vice President — Administration?

A I am in charge of most of the company's administrative functions as opposed to their advertising administration.

General administration.

Q Does that include the compensation?

A Yes, I guess that's also in connection with my activities.

Q Do you know whether Catharine Gibson is one of the officers of the company who have indicated they will not tender shares to the company?

A I believe she is.

Q Isn't it a fact that by reason of low market prices of stocks of corporations generally, that stock options are not presently in favor as incentive compensation?

A Yes.

Q Isn't it also a fact that by reason of tax law changes, and individual income tax changes, stock options have also declined in popularity as incentive compensation?

A I can't tell — I don't know the full effect of the changes of the tax law.

Q Isn't it a fact that at the present time there are

options outstanding for the exercise of an aggregate of 111,973 shares at prices below the approximate book value? You can look at Plaintiff's Exhibit 1, page 42.

MR. SISK: Your Honor, may we have that question read back?

THE COURT: Yes.

(Question read.)

Q (Continuing) Or approximately at book value?

A Well, I can't tell just by inspection. I see a number of shares at prices below what present book value is but I don't know what they add up to.

Q Let's take the book value that's in the prospectus.

MR. SISK: If your Honor please, the document is in evidence and it is a question of arithmetic. Mr. Nemser can do the arithmetic and we don't have to take the time of the Court and the witness.

THE COURT: I agree with that. The answer has been some of them are below offered price. It is set out in the prospectus, book value. There may be a next question and if there is, go to that.

Q Does the prospectus make any mention as to what will be the effect on the outstanding stock options or the stock option plan itself in connection with the impact of the

exchange offer, say, there is a 100 per cent tender, is there anything in there what will happen to these tendered?

A I can't seem to find any. I don't know if there is or not unless I take some time to look for it. I seem to remember there was something but I can't seem to put my finger on it.

MR. S. NEMSER: I will state for the record I haven't been able to find anything.

Q What is Wells, Rich, Greene's contemplated program with respect to outstanding stock options under the stock option plan as a consequence of this exchange offer?

A As far as I know, we haven't made any specific plans in that direction.

Q Do you know whether there is any reason why a plan cannot be promulgated based on a right to purchase common stock at the greater of a fixed percentage of fair market value or consolidated book value.

A To purchase the stock?

Q Right, to purchase.

A You mean an option?

Q Option.

A Well, no, I don't think I do.

Q Have you, as vice president of administration, considered the matter of the grant of stock options based on

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book value?

A Have I?

Q Yes.

A No.

Well, let me modify that a little. I think our plan provides that the option price be granted at market unless book value -- I'm talking from memory. Maybe I should read the plan. I don't really remember that.

t5 pm

Q Are you familiar with the reasons this corporation has given for seeking to go private?

A Yes.

Q Have you read this prospectus?

A Yes.

Q Have you read that it is contemplated that possibly the method of ~~incentive~~ inceptive compensation would be the use of stock options based on book value?

A Yes.

Q Did you participate in the various discussions about that?

A Yes.

Q Do you consider that book value to be a truer reflection of value than current market price?

A I don't know that I consider it would be a truer value. I think from the point of view of an employee, it would represent less effect orthere would be less effect on his right to exercise options or the value of his options if what affected them were the performance of the company alone as opposed to the vagaries of the market.

Q Let me ask you this question as a director and officer of this corporation: Do you consider yourself a fiduciary to the public stockholders of this company?

A I certainly do.

Q Do you consider that since one of your reported reasons here for going private is the matter of giving stock options based on book, that these stockholders should at least get their stockholders' equity?

A Could you say that again, please?

MR. SISK: Could we have a definition, your Honor, what Mr. Nemser is referring to by stock owners' equity?

THE COURT: I am glad you asked that because I was about to ask to have that explained.

Q Instead of using the term stockholders' equity here, that they would get their book value.

THE COURT: Now let us get to the framework of the question because I think it's been lost. Read that back.

(Read.)

THE COURT: Is that what the question is?

MR NEMSER: Yes.

A Well, I don't know that book value as such is the measurement of the value of the stock and if what the stockholders are entitled to is the value of the stock, I think that is what they should get. I don't know whether book value pure and simple is the measurement of value.

THE COURT: I gather the question then is why should the -- those who have options that are insiders

in the company get more?

THE WITNESS: Well, I think the book value would be a measurement of performance and the theory being that they contribute to an increase in thismeasurement and therefore be entitled to benefit from it.

Q You consider that for the employees the market prices, the vagaries of that is not a good barometer, is that correct, with respect to employees?

A Well, I don't know whether it is a good barometer or a bad barometer, but it is a barometer over which their efforts have no control, or very little.

Q Isn't that also true with respect to the stockholders to which you have a fiduciary duty?

THE COURT: That is obvious. The point Mr. Jacobs is making, he feels, as I understand his testimony, he feels that the employees would have a surer less variable standing -- I gather that is what his testimony was.

Q Wouldn't it then be feasible in line with your testimony a few questions back that this company could have stayed public and there could have been options granted or rights granted based on either the greater of a percentage of market or consolidated book?

A Could you repeat that?

(Read.)

MR. SISK: If your Honor pleases, I have an objection. The use of the term options without any definition may be misleading. There are various kinds of options, qualified options, unqualified options and I don't know and I am not sure that Mr. Jacobs knowsexactly what Mr. Nemser is talking about.

THE COURT: I suppose -- I don't know either but I had assumed that what he was talking about,whatever their options were, those that were available to employees. And he was limiting his question to availability. As I had read it, I think it was Miss Lawrence's affidavits and matters that you gave me and heard the testimony up to now, the -- one of the reasons for going public was in order that these options would be -- better options could be given and would motivate the employees and so forth and I think that is what he is talking about.

MR. SISK: The laws do vary with respect to the treatment to qualified versus unqualified options and you can do some things with one that you can't do with the other.

THE COURT: He is not asking him a legal opinion. He is asking him about his reasons for doing various things, what would be the effect of them. He is not asking a legal question.

MR. SISK: I submit it ought to be broken into two questions, your Honor.

THE COURT: All right. There are two kinds of options, one qualified and one unqualified?

MR.NEMSER: Your Honor, this company has a history of granting either qualified, unqualified, rights to purchase ~~persons~~, they have every type conceivable and the stockholders have approved them right down the line throughout the history --

THE COURT: I think that is beside the point. The point Mr. Sisk hasraised is for you to address your questions to Mr. Jacobs to make it clear what kind of option you are talking about.

MR.NEMSER: Your Honor, I am putting it on the basis that this company has had a plan approved by the stockholders --

THE COURT: Mr. Nemser, I know -- at least I think now after the weekend and all day today, I think I have some understanding of what you are alleging, so let us not go through that again. All I am asking you to do is, if you will, to follow Mr. Sisk's suggestion and to let Mr. Jacobs know what you are addressing your question to in terms of the kind of option.

I think that is a fair request for him to make.

Q Let us put it on the basis of non-qualified

options.

A Well, as I understand it, while you could offer options on the basis of book value or on a ~~fix~~ fixed percentage, as I understand it, the problem is that -- the problem comes when you come to buy back the options. If you have a plan where the company has agreed, as would exist in a privately held company where the options would be granted at book value with agreements to buy back when the employee leaves or under certain circumstances. As I understand it, the problem is that when you come to buy back an employee's stock that he purchased under the option plan, you may very well be paying him at a price substantially higher or different from what is available to the stockholder on the market, who is not an employee, and it is my understanding that that is not a proper procedure. That you would end up paying a stockholder who is inside the company a higher price than the stockholder on the market could get for his stock. That is what I understand to be the objection to having a double system.

Q Isn't it a fact that under the stock purchase incentive plan that this company had, that to the extent option rights lapsed, they would be bought back by the company at the purchase price that was paid for the stock?

A But those were not options. Those were purchases from the company.

Q Then went back to them at the price they paid for them, right?

A I don't remember the exact provisions.

Q The record will indicate that.

MR. NEMSER: Your Honor, I have no further questions of this witness.

THE COURT: Mr. Sisk.

CROSS EXAMINATION

BY MR. SISK:

Q Mr. Jacobs, viewing the package of $3 cash and $8 debentures, isn't it a fact the stockholders are being offered more than book value?

A Yes.

MR. SISK: Thank you.

REDIRECT EXAMINATION

BY MR. NEMSER:

Q I will give the usual follow-up question. That assumes full par for the debentures, is that right? Mr. Sisk's question assumes full par?

A Not necessarily because as I think Mr. Little pointed out before that if interest rates go down, the value of the debenture can rise to over par.

Q The prospectus places a value on the debentures at a 25 per cent discount, doesn't it?

A Yes.

Q And the current trading is below even the 25 per cent, more than that, isn't it, it is below 30 per cent?

A But this is a fluctuating price and interest rates, when we started, were 11-1/2 to 12 and they are down to 10 at some banks today. So I don't know what the bond is going to trade at.

Q They are trading right now on the ~~one issue~~ when-issued, aren't they?

A I guess they are.

Q At a 30 percent discount?

A Right now.

RECROSS EXAMINATION

BY MR. SISK:

Q Mr. Jacobs, isn't it a fact that if the stockholder holds the debenture to maturity, he gets more than book value, isn't that true?

A Absolutely.

Q Isn't it also true that book value is a figure that has no relationship to what is happening in the market?

A Yes.

Q So that in a sense what Mr. Nemser was asking you to do was to compare apples and oranges, asking you to compare

on the one hand the figure that has no relationship to the market, namely book value and to also on the other hand the figure that is solely affected by trading in the marketplace, which is the present value of the debentures, and I submit that it is very difficult to compare apples and oranges. I think -- this is probably argument, your Honor, and not a question, but I --

THE COURT: I am glad you recognized that.

MR.SISK: I got carried away.

Thank you.

THE COURT: Anything further from this witness?

Thank you, Mr. Jacobs. You may step down.

(Witness excused.)

MR.NEMSER: Your Honor, I want to call one more witness, Frank G. Colnar.

F R A N K G. C O L N A R, called as a witness by the plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. NEMSER:

Q Are you a director and Executive Vice President — Financial Planning?

A Yes, sir.

Q What were your duties as Executive Vice President—

Financial Planning, just briefly?

A Briefly it is preparing operating forecasts or special projects on the use of funds, et cetera.

Q You purchased 100 shares of this stock on July 9, 1974, 200 shares on July 10, 1974. What were the circumstances under which you bought stock at that time?

A Well, the best I can think is that I had 10,700 and I just wanted to round it out to 11,000. I don't know of any other reason, really.

Q It was a good investment, wasn't it?

A I always think Wells, Rich, Green is a good investment.

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page 136 follows

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page 136 follows

(In open court.)

MR. NEMSER: Your Honor, I have no further questions of this witness.

MR. SIS: No questions, your Honor.

THE COURT: Thank you very much.

(Witness excused.)

THE COURT: Anything further, Mr. Nemser?

MR. NEMSER: Your Honor, we have, for the record, however, certain additional documents that we would like to have marked in. Does your Honor want to take the time now to work out a procedure to have these stipulated in as exhibits? Certain of the documents which White, Weld produced. I think some of the other documents that you have produced.

THE COURT: One of those documents that was referred to was a letter I think of Mr. Little, is that Exhibit 26? That is supposed to be a confidential exhibit? Mr. Little's letter of -- is that confidential?

MR. SISK: September 25 is not confidential. That is Plaintiff's Exhibit 26.

t5 pm

THE COURT: Let me ask you this, Mr. Nemser: Would the documents that you are going to introduce, additional documents, would that be your case?

MR.NEMSER: That would be our case, yes, sir.

MR. SISK: I don't understand this procedure of Mr. Nemser offering a document I haven't seen which hasn't been identified.

THE COURT: Mr. Sisk, he was not doing that. He said he had some additional documents and he wanted to work out a procedure with you in regard to it. That is what he indicated.

MR.SISK: Can we do it immediately?

THE COURT: Of course. My own feelings about it is, if you have any live testimony at all, maybe we ought to just proceed with that.

MR. SISK: That is a decision I am right in the middle of making, your Honor, but I think I need to know what is the plaintiff's case and I would like to wait --

THE COURT: All right, that's fair.

How much time do you need?

MR. NEMSER: Just a few minutes, your Honor. The only documents I would put in would be the various plans that this company had, the incentive plans referred to.

THE COURT: Why don't you show them to Mr. Sisk. We will take a recess.

MR. SISK: I would also like a chance to talk with my clients so that if we could take a short recess.

THE COURT: All right.

(Recess.)

(Plaintiff's Exhibits 27 through 42 were received in evidence.)

(Defendants' Exhibits A through G were received in evidence.)

MR. NEMSER: Your Honor, the parties have stipulated to the introduction into evidence of additional exhibits which have been marked pursuantto the stipulations.

THE COURT: Have you made up your mind now, Mr. Sisk?

MR. SISK: I have, your Honor, with the stipulation and the admission of Defendants' Exhibit A, which constitutes the package of affidavits we gave your Honor on Sunday, and the admission of Defendants' Exhibit B, C, D, E, F and G which are the materials from White, Weld which they considered in connection with the subject matter of fair value, We have no witnesses or further evidence to introduce. I will just make onemore comment before asking your Honor a question and that is I would like the Court

to note the absence of the plaintiff, Mr. Kaufmann.

The question, your Honor, is, may we ~~have~~ be heard on the subject of Judge Cannella's decision and also on the subject of whether the plaintiff has carried his burdens?

MR. NEMSER: Your Honor, may I just mention as far as the plaintiff is concerned, I have no request from the defendants that he ~~had been~~ be here today. Had they requested it, he certainly would have been. He is a registered owner of the stock and --

THE COURT: I don't regard that as being fruitful, Mr. Nemser, in any event. I will tell you, gentlemen, where we stand. I am not going to be able to, and don't intend to try to make a decision on this from the bench. I have studied some of the papers during the period of time you got them to me. I do recognize that the plaintiff has brought this at an extremely late hour, as Mr. Sisk commented, but nevertheless I cannot avoid that facing the problem. What I would prefer to do, my own feeling about the matter is, that in terms of a final decision on the question, that is, whether an injunction ought to issue or not, what I would prefer to do is during the period in which I have to contemplate and study this problem to makeup my mind about it, since I understand that the offering closes today at five and therefore I would assume thatall the people who

are going to sell, will have had to have their intentions known by that time, I would prefer to get an agreement from you, if you can get it, Mr. Sisk, that the matter will not be finalized and consummated until during the time I am now trying to decide whether an injunction would issue. I prefer that because I think it would be more in the defendants' interest, particularly if I decide the plaintiff has no case, that this matter be done pursuant to a gentlemen's agreement rather than in the form of an injunction. I think if I can't get that agreement I am obligated to at least to enjoin consummation of the matter until such time as I am able to study it and reach some rational conclusions about it. I prefer for us to agree that it will not be consummated until -- and I will try to reach my conclusions as quickly as I possibly can. I would prefer you first agree on it. I will issue an injunction.

7 pm

MR. SISK: This does create some problem from a legal point of view.

I did not contemplate more than two or three minutes on the subject of Judge Cannella's decision. I think, your Honor, as you look at these papers, if you could look at them in the perspective of Judge Cannella's decision --

THE COURT: I am perfectly willing. This was not to bar you from enlightening me on Judge Cannella's decision or anything else. All I am indicating to you is that no matter what -- how I am leaning at the present time, I don't think it would be fair to either the defendant or the plaintiff by reaching a conclusion, a final conclusion on this matter without further study.

MR. SISK: Well, I guess the way I'd like to do it would be to argue a little bit with you before about Judge Cannella but then assuming that your Honor is unpersuaded and I gather that my chances of persuading you to act forthwith are probably not very good, then I think we come to the really hard question, and that is that we have up until 5 o'clock, Wells, Rich, Greene does, to determine whether to withdraw from the offer.

If we don't withdraw, our obligation ripens into an absolute obligation to accept those terms. And we

must pay for those that have been tendered. I do not believe that we can, much as I would like to work out a friendly agreement, work it out without incurring some substantial liability or potential liability.

THE COURT: Then I -- I wasn't aware of that, so I think therefore the obligation is on me to take that off your shoulders.

My reasons -- not that I am now making a final decision but I have to hold this matter until I can make a final decision and a rational one. Under the circumstances, it would appear that I am going to have to issue an injunction in regard to -- against the defendant in terms of finalizing this matter, making it a fait accompli, until such time as I am able to decide the case, which I trust will be within the next several days.

MR. SISK: Would your Honor care to give me my shot at Judge Cannella's decision?

THE COURT: I would like to hear briefly from the plaintiff and from you. Yes, I would like to hear briefly from plaintiff and you. In terms of what matters that you want to highlight.

I don't want you to go over again with me what I have already read, but Judge Cannella's decision is certainly one that I would very much like to hear from

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both of you about.

All right, why don't we do this as we normally do. I will hear argument. I frankly am not going to want to hear more than ten minutes from a side.

I think that is sufficient time.

MR. NEMSER: Judge Cannella's decision --

THE COURT I am not limiting you to Judge Cannella's decision. Mr. Sisk has that burden. He wants to enlighten me further on Judge Cannella's decision. I certainly want to hear that but you may do anything you want.

MR. NEMSER: Judge Cannella's decision, your Honor, is certainly in our opinion on all fours with the matter of the directors and officers of this company, particularly Mary Wells Lawrence who purchased 30,500 shares -- Mary Wells Lawrence, the chairman of the board and chief executive officer, who for the first time since getting her shares, on becoming a founder of this corporation, purchased 30,500 shares in January, February, March of the particular year in which this exchange offer was made for all of the outstanding public stock.

We indeed then have, in our view, another obviously material matter of Catharine Gibson a vice president going back to the founding, who on the very first day of the --

after the announcement on September 4th, at the closing of the market, on September 5th she buys in the open market 1,000 shares with the obvious intention and as the testimony was stated, of not tendering the shares. She obviously considered that this was a good investment for her and this is just the type of thing that Judge Cannella said that the public stockholders should know.

THE COURT: I don't think the testimony went that far. The testimony is she bought the shares. The testimony is also that she was not among those who presently oppose to tender. There is no testimony that shows she bought the shares with the intention not to tender.

MR. NEMSER: Your Honor, I think she would be in the position where she couldn't tender because if she did, she probably would have been violating Section 16(b) of the Exchange Act.

THE COURT: All right. That is a different argument.

MR. NEMSER: Yes. The point I am trying to make in this respect is that here we have four officers of this company, three of whom were directors, who in 1974 right through to the day right after the announcement, have made purchases of stock and that is exactly what Judge Cannella said, they have a right to know in their judgment

what the insiders were willing to pay for the stock of this company. Mary Wells Lawrence was willing to pay above the price she offered to the stockholders or this o ering.

THE COURT: So your argument is that Mrs. Lawrence's ~~50,000~~ 30,000 or more shares that you allege she bought since -- is that since September?

MR. NEMSER: That was -- she bought in January, February and March of 1974, your Honor. In the case in which Judge Cannella decided, the purchase there was substantially before the exchange offer.

THE COURT: And Miss Gibson bought her stock and the fact that they bought and the price at which they bought these shares, you argue was not set out in the prospectus and there it is a material misrepresentation according to you within the meaning of ~~10(b)(5)~~ 10(b)-5.

MR. NEMSER: And ~~14 D~~ 14(e), your Honor.

In connection with the overal claim -- I should preface my remark before moving on to that, your Honor.

I think we have established a great number of misrepresentations in this prospectus. I think that we have established that the entire basis for the so-called reasons could not have any true relevancy here to the reason for going private as they represented because we have testimony from Mrs. Lawrence that it would be at least approx-

imately five years before most of these things that she is talking about could ever come to fruition and yet they are coming along and saying they want to go private now, they must go private and they are basing it on what we would call the squeezed market situation at this very moment. This is the ~~hole~~ whole -- the whole dilemma and indeed the cause of such irateness from people such as the SEC Commissioner Sommer and indeed we are seeing articles coming out fromall sources, including Business Week came out with an editorial condemning this opportunistic technique, moving in at a period when the market is aberrational, has no relation to value. They chop the true value out from the stockholders and take it for themselves. Here we even have a more extreme situation.

THE COURT: Is that in any way a violation of any federal securities laws?

MR. NEMSER: Your Honor, I would say it is in the sense of the plan, scheme and device and when it ties in with these fraudulent statements in the prospectus, I think we would then come in line with the recent decision in Schlick v. Penn Dixie Cement of the Second Circuit. I think we certainly come within the massive framework of these ~~14(e)~~ exchange offer cases which Judge Cannella indicates in his decisi

Here we have a situation that unless therapeutics can be undertaken before the horse leaves the stable, it is impossible, and I am quoting, to unscramble the egg, unquote.

Now, with respect to our burden we have the following in that respect. A prospectus places the highest end of disclosure. That was the decision in Feite v. Leasco Processing Equipment Co., 332 Fed. Supp. 511, 571 in the Eastern District of New York in 1971.

We also have the situation of a corporation buying all of its publicly owned stock and leaving the directors, 12 individuals, with the ownership of this entire organization, wiping out more than 2,000 stockholders. This is a situation where it is called an issuer attempting to repurchase its own shares is the insider par excellance or the most inside of insiders. And the fiduciary obligation and the duty are very, very heavy in that situation. Also, since we are not here faced with a situation of two competitors buying for a target where let us say for a while we had Loew's moving in for CNA and CNA opposing them for a long time or any of these situations where offers can be countered by corporate entities opposing them. Here this was the corporation itself guided by the management to make an offer. No source can come back at

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them to educate the stockholders and this was very significant, your Honor, and that is one thing I was trying to drive through on with the White, Weld witness where he made no distinction between a competitor going for a target company and here a corporation which has a duty to the majority stockholders, 83.7, I don't think there has been another case, and the defendants have put in an exhibit from White, Weld of other tender offers and there has never been that I know of a situation where stockholders, directors owning 13.9 per cent, that is all, can come along and wipe out 83.7 per cent of the stockholders, the majority. But the beneficiaries, the owners, the trusts, they are immediately built in as Commissioner Sommer indicated and as the law clearly indicates, they have a built-in conflict of interest because the less they give the public holders if they cut part of the pay that belongs to the public stockholders and keep it for themselves, that is going to be all for them and as the record shows, that can run to the tune of $3 million and the private public stockholders of up to values going from three on the basis of 2-1/2, on the basis of book, to about 15 million going on true value.

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t3 pm

THE COURT: The point is,as I understand it, the plan, as to Mr. Little's testimony and Lawrence's testimony as I understood it, aren't they selling at above or are the offers not above what the present share are now selling? As I understand what has been going on, the shareholders now buy taking advantage of this offer, get more than the market price today, is that correct?

MR.NEMSER: Your Honor, that is true, but the important point is, the stockholders who don't want to get out, the owners.

THE COURT: Mr. Sisk has indicated to me, and Mr. Little's testimony is, by virtue of the fact the offer is going well.

MR.NEMSER: Your Honor, let me point this out. Incidentally we have gotten calls, but the point I want to make is this, and --

THE COURT: I think you want to do that a little later. What I would like to know from you is -- I am sorry I have to cut you off, I have given you almost 15 minutes, I indicated ten -- otherthan the things you have indicated, what are the disadvantages of this plan from the point of view of the stockholders that you purport to represent?

MR. NEMSER: The disadvantage to the stockholders the fact that those who want to stay with their companies

are faced with an impossible situation. They are damned if they do and damned if they don't.

A lot of these stockholders have tendered because of the fear that if they are down to a small number which is part of this whole squeeze out maneuver, when they are down in a small number, then they are at the full mercy and wiped out further.

THE COURT: There is nothing on the record on this.

MR. NEMSER: Your Honor, the prospectus itself is an in terrorem in this sense. It equivocates, it says, we may do this, we may not. However, they say we want to go private. So, the whole deal is, a stockholder will say they are going to get any now at at a lower price they will freeze me out. That is what they want. but, Mary Wells Williams testified today, she had no choice but to say it, sure they are going to go private. If they don't get them on the first whack, they will whack them the second time.

THE COURT: You mean Mrs. Lawrence?

MR. NEMSER: Yes, Mrs. Lawrence.

THE COURT: All right, I think I get the point.

Mr. Sisk.

MR. SISK: Your Honor, I rise with a good deal of trepidation. I feel like the baseball batter,

the last batter in the ninth inning, knowing at least as far as today is concerned the score seems to be a little against me.

THE COURT: I don't want you to feel that way at all.

MR. SISK: I would like to get a hit, your Honor. Let me try.

THE COURT: I have to make a rational decision, that is all.

MR. SISK: Very briefly, I have listened all ~~day~~ day to Mr. Nemser's ~~interest~~ case with great interest. I gather he in turn listened to your Honor this morning when your Honor made comments about Judge Cannella because he tailored his case in that direction.

Although he said this morning he proved fraud and conspiracy, I haven't heard a word about this all day long. He just said now, according to Mr. Nemser, there are misrepresentations in the prospectus and he cites the fact Mrs. Lawrence had ~~both~~ bought 30,000 shares. All of her stock and money she had made is disclosed. The fact she bought 30,000 and when she bought it is not disclosed.

Let us take a look at the decision. Judge Cannella was dealing with a situation where one of two principal stockholders purchased privately 80,000 shares

about 1-1/2 to 2 per cent of the total outstanding shares of the company. She bought it not at a price above market. She bought it at market. The price she bought it at is less than the price of the package of cash and debentures which is being offered to the shareholders. So that in all respects this case, unlike Mr. Nemser, I don't see it uneven. He says it is on all fours, but I don't think it is even on one of the fours.

The second major area that Mr. Nemser says constitutes a misrepresentation is this area that deals with what is the company going to do about options and so forth and what is it going to do in the future about the stockholders who don't tender.

Plaintiff's Exhibit 1, the prospectus which is in evidence, has a whole paragraph on that, on page 17. It is paragraph No. 4 and it is called "Possible Retirement of Remaining Public Shares."

I wouldn't take the time now to read it into the record because it is already part of the record but I call your Honor's attention to it. It is disclosed as to what mechanics the company may pursue if this offer is as successful as we believe it should be.

Mr. Nemser cited the case of Schlick v. Penn Dixie Cement, a case we say has no application here because

a central factor in that litigation was that the defendants there were alleged to have manipulated the price to depress the market value and that the manipulation was designed to create a more favorable exchange ratio. There is no allegation of that here and certainly no evidence of that here. If anything, the reports were quite to the contrary.

Now, the very serious question which I think the Court has to look at at this point, if I may submit, is the question of the other side of the coin. What happens if your Honor does issue some kind of a restraining order today as you have indicated you are thinking. I project the stock tomorrow will drop anywhere from one to three points, that the people who hold these shares, their confidence in this exchange offer will be very substantially shaken we contend and people can get very badly hurt by this, your Honor. We have given your Honor evidence of what the total number of shares tendered as of noon today was, we gave you that in camera and I wouldn't repeat it in argument. We have given your Honor evidence of the number of people, in affidavits, which are part of Exhibit A, who have said they oppose plainitff's requests for relief after having read the complaint and in addition we have given your Honor an affidavit from a White, Weld representative who has contacted people who hold thousands of other shares. So that what

we have to look at and I urge the Court to look at, the injury that can be done by issuing some kind of restraint today. I ask your Honor to consider Judge Frankel's decision where the fact was, on a case that was not quite that different from this, he held you can prove the amount of injury and recover for it in dollar damages. There is no problem about unscrambling eggs here. If after a trial, and after your Honor has heard all the evidence, so we don't have to do this in a great rush here like we have done here in the last three or four days, if your Honor were to conclude that Mr. Nemser is correct, your Honor could comepletely satisfy his client and all other clients similarly situated if your Honor rules there is a class, by an awared of dollar damages. That is a total remedy. It is clear from the testimony of Mr. Nemser's own expert witness that you would look to whatever value you would derive, after studying the expert testimony, you would look at what the package was worth and you would simply deduct the package from whatever the other figure is. You would come out with a dollar figure and if we lost the case, your Honor could rule we have got to pay them.

So, it is not a question of irreparable injury but there is irreparable injury that will be done if a restraining order issues today and we urge your Honor

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So, it is not a question of irreparable injury but there is irreparable injury that will be done if a restraining order issues today and we urge your Honor

not to do it.

MR. NEMSER: Your Honor, may I have just two comments fast?

THE COURT: I think I have heard enough. Mr. Sisk, I am well aware of the problem and certainly sympathize with it but the only thing I can say is that I think that your damage ought to be minimized since the basis upon which I will issue an injunction, which I think I am required to do, and there is a serious question, and by the standards which we use in this circuit, I have to explore the merits of their claim and I can't do it now and on this basis I will have to issue an injunction until I make a decision. I will make a final decision on it as quickly as I can attempting to keep in mind the interests of all parties.

MR. SISK: Your Honor, as I was a boy scout at one time, I believe in the motto of being prepared. There is a form of restraining order which we probably could live with although I can't, as I say, I think it is going to create lots of hardships for lots of people we would suggest your Honor look at this form of order. We would also suggest although we didn't include it in this order that Mr. Nemser should be required, as I believe the rules of the court require to post bond.

ot 8 pm

t9 pm

THE COURT: Has Mr. Nemser seen it?

MR. SISK: No, your Honor, I myself hadn't seen it until a few moments ago.

THE COURT: It would appear to me, gentlemen, I ought not to delay this any further to explore that. Assume in any event that some kind of order enjoining the finalization of this matter is issued and is effective as of 4 o'clock today and you may later -- Mr. Nemser, you may go over this matter and if you can agree on the form of the order that you are going to approve, sign, submit it to me and I will sign it. I think Mr. Nemser has a right to look at it and at least make some recommendations.

MR. SISK: It is a very short order, your Honor. Maybe we could resolve it very quickly. Let me suggest this. Under the terms of the exchange offer, people may still be tendering up until 5 o'clock.

I would suggest if your Honor made the order effective as of 5 p.m., it would satisfy everybody's problem.

THE COURT: Fine.

We will make the order effective at 5 p.m. today. I gather that you gentlemen have given me enough literature to read. If you have any intentions or any desire to file any further papers in this matter, that is, briefs or memoranda?

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I think that other than reading Judge Cannella's decision, I think I am pretty aware of what your various positions are.

Mr. Sisk has told me what he thinks of Judge Cannella's decision and how inapplicable it is to this case and you have told me, Mr. Nemser, how applicable it is, so thatI probably wouldn't need any more, need to hear any more from you on that. In any event, if you do intend to file any memoranda, I suggest it be done within the next 24 hours. I think that it is imperative under the circumstances I try to reach a decision in this matter and write an opinion forthwith.

MR. SISK: May we submit this order to your Honor and may we also ask if yourHonor will require a bond?

THE COURT: What is your -- you have a point but I think that the circumstances of the case, that this is a man who owns 100 shares, it would appear to me that the equities would be too much in terms of requiring bond.

I think what I will do is just put more urgency on me to come to a final decision quickly.

I understand that I have discretion to require it. I don't think under the circumstances I will. Are you ready for me to sign the order? Do you have any objections to the order as proposed?

I would wish if we are going to have any argument on that, that you and Mr. Sisk would reach -- present it to me and let's go.

MR. NEMSER: I would like to ask him two technical questions on that.

THE COURT: The case is now adjourned, gentlemen.

I have another case pending.

- - -

WITNESS INDEX

Name	Direct	Cross	Redirect	Recross
Nathan Belfer	11	20		
Mary Georgene Lawrence	46			
William Brian Little	83	112	118	
Frederick L. Jacobs	113	129	129	130
Frank G. Colnar	131			

EXHIBIT INDEX

Plaintiff	Identification	In Evidence
26	99	
27	100	

Court		
2	101	

Plaintiff's Exhibits ("PX") Received in Evidence at the Hearing:

Plaintiff's Exhibits 1-20 as Hereinbefore Reproduced

PLANTIFF'S EXHIBIT 21

WRG Press Release, Datelined June 14, 1974

NEWS

FOR: WELLS, RICH, GREENE, INC. (NYSE)

APPROVED BY: Frederick L. Jacobs, Sr. V.P. (6/74)

PX21

SUBJECT: Second Quarter, Six Months Results

CONTACT: Stephen B. Booke (212) 593-8620
Thomas McDermott (212) 593-8629

RELEASE: IMMEDIATE

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N. Y. STOCK EXCHANGE

WELLS, RICH, GREENE, INC., REPORTS

SECOND QUARTER, SIX MONTHS FIGURES

NEW YORK, N.Y., June 14 -- Wells, Rich, Greene, Inc., achieved record billings and earnings for the second quarter ended April 30, 1974, Mary Wells Lawrence, chairman, and Charles Moss, president of the advertising and marketing company, announced jointly today.

Billings for the first six months of the current year showed a gain, while net earnings were down slightly compared with the same six months in fiscal 1973 due to the TWA strike during the first quarter.

For the second quarter, billings rose to $45,668,800 from $45,200,000 for the same three months a year ago. Net earnings increased to $925,760, or 57 cents per share, based on 1,631,524 shares outstanding. This compared with $915,850, or 56 cents a share based on 1,619,507 shares, for the same three months in fiscal 1973.

Billings for the first six months reached $91,268,000, up from $90,100,000 a year earlier. Net income for the first half of the fiscal

-more-

year was $1,738,260, or $1.07 cents per share on 1,631,524 shares. This compared with $1,783,861, or $1.10 cents a share on 1,619,507 shares, for the same six months in 1973.

All figures have been adjusted to reflect the acquisition of Gardner Advertising Company, Inc.

Wells, Rich, Greene - Gardner Advertising was recently appointed by Warnaco Inc., as the advertising agency to handle its Warner's division. Billings of Warner's are between $1.5 million to $1.7 million.

Mrs. Lawrence noted, "We are optimistic that this will be another excellent year for Wells, Rich, Greene."

The company's shares are listed on the New York Stock Exchange.

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WELLS, RICH, GREENE, INC.

For the six months ended April 30

	1974	1973
Gross Billings	$91,268,000	$90,100,000
Operating Revenues	13,683,000	13,500,000
Net Income	1,738,260	1,783,861
Earnings per share	1.07	1.10
Shares Outstanding	1,631,524	1,619,507

For the three months ended April 30

Gross Billings	$45,668,800	$45,200,000
Operating Revenues	6,846,500	6,800,000
Net Income	925,760	915,850
Earnings per share	57¢	56¢
Shares Outstanding	1,631,524	1,619,507

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PLAINTIFF'S EXHIBIT 22

WRG Press Release, Datelined August 27, 1974

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NEWS

FOR:	WELLS, RICH, GREENE, INC. (NYSE) PX22
APPROVED BY:	Frederick L. Jacobs, Sr., V. P. (8/74)
SUBJECT:	Nine and Three Month Results
CONTACT:	Tom McDermott (212) 593-8629
RELEASE:	IMMEDIATE

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N. Y. STOCK EXCHANGE

WELLS, RICH, GREENE ACHIEVES 43 CENTS FOR THIRD QUARTER; $1.50 FOR NINE MONTHS

NEW YORK, N.Y., Aug. 27 -- Mary Wells Lawrence, chairman, and Charles Moss, president of Wells, Rich, Greene, Inc., the advertising and marketing company, announced jointly today that billings for the nine months of the current year rose to $138,610,600, a 3.7 per cent increase, from $133,700,000 for the same period a year earlier.

Net earnings increased to $2,442,632, or $1.50 per share, based on 1,631,524 average shares outstanding. This compared with $2,433,000 or $1.50 per share based on 1,623,235 average shares outstanding last year.

Revenues for the nine month reporting period rose 5.5 per cent to $21,142,600 from $20,045,000 for the comparable period in fiscal 1973.

-more-

BOOKE AND COMPANY, INC. FINANCIAL AND INVESTOR RELATIONS

919 Third Avenue
New York, N.Y. 10022
(212) 593-8600 TWX 710-581-3697

300 S. Wacker Drive, Suite 1005
Chicago, Ill. 60606
(312) 922-9393 TWX 910-221-0229

Wilshire Harvard Tower
2811 Wilshire Blvd., Suite 500
Santa Monica, Calif. 90403
(213) 829-4601 TWX 910-343-6455

37 Park Street
London, W1Y 3HG, England
(01) 629-6049 TWX 851-261-623

1200 Milam St., Suite 2942
Houston, Texas 77002
(713) 229-8851 TWX 910-881-5090

1925 K Street, N.W., Suite 203
Washington, D.C. 20006
(202) 331-7040

For the third quarter, ended July 31, billings rose 8.6 per cent to $47,342,600 from $43,590,400. Net income increased 8.5 per cent to $704,372, or 43 cents per share, compared with $649,100, or 40 cents per share, for the comparable three months last year.

All figures have been adjusted to reflect the acquisition of Gardner Advertising Company, Inc.

Mrs. Lawrence noted, "We are pleased with the results to date and are confident this will be another good year for Wells, Rich, Greene."

The company's shares are listed on the New York Stock Exchange.

WELLS, RICH, GREENE, INC.

For the Nine Months Ended July 31:

	1974	1973
Gross Billings	$138,610,000	$133,700,000
Operating Revenues	21,142,600	20,045,000
Net Income	2,442,632	2,433,000
Earnings per share	$1.50	$1.50
Shares Outstanding	1,631,524	1,623,235

For the Three Months Ended July 31:

	1974	1973
Gross Billings	$ 47,342,600	$43,590,400
Operating Revenues	7,459,600	6,535,300
Net Income	704,372	649,100
Earnings per share	43 cents	40 cents

#########

PLAINTIFF'S EXHIBIT 23

Newspaper Notice of WRG Exchange Offer
Dated November 6, 1974

Notice of Exchange Offer to Holders of Common Stock of

November 6, 1974

Wells, Rich, Greene, Inc.

Wells, Rich, Greene, Inc. ("WRG") is offering to the holders of its Common Stock, par value $1.00 per share ("Common Stock"), subject to the terms and conditions contained in its Prospectus dated November 4, 1974, to exchange cash and its new 10% Subordinated Sinking Fund Debentures due November 1, 1984 (the "Debentures") for shares of Common Stock in the ratio of

$3 Cash and $8 Principal Amount of Debentures in Exchange for Each One Share of Common Stock Tendered.

THIS EXCHANGE OFFER EXPIRES AT 5:00 P.M., NEW YORK CITY TIME, ON NOVEMBER 25, 1974, UNLESS EXTENDED.

Subject to the conditions of the Exchange Offer, WRG will accept any and all shares of Common Stock tendered before the Expiration Date up to a maximum of 1,405,008 shares, constituting all outstanding shares of Common Stock other than those owned by members of the Board of Directors. The Directors have agreed not to tender their shares. Tendered shares may be withdrawn at any time prior to 5:00 P.M., New York City time, on November 12, 1974; thereafter, all tenders of Common Stock are irrevocable. Interest on the Debentures will accrue from November 1, 1974.

The terms and conditions of the Exchange Offer and other important information are set forth in the Prospectus and Letter of Transmittal. Copies of these documents have been mailed to all stockholders of record; additional copies may be obtained from White, Weld & Co. Incorporated or from other qualified Soliciting Dealers or from D. F. King & Co., Inc., in any jurisdiction in which the Prospectus may legally be distributed. The Exchange Agent is:

THE CHASE MANHATTAN BANK, N.A.
Corporate Agency Division
1 New York Plaza, 14th Floor
New York, New York 10015

WRG has authorized White, Weld & Co. Incorporated, as Dealer Manager, to use its best efforts to arrange for selected securities dealers ("Soliciting Dealers"), including itself, to solicit acceptances of the Exchange Offer. A Soliciting Dealer who has entered into a Soliciting Dealer Agreement with the Dealer Manager and whose name has been inserted by the depositing stockholder in a duly executed Letter of Transmittal filed with the Exchange Agent will be entitled to a fee of 37½ cents per share for each share of Common Stock accompanying such letter and exchanged.

Questions or requests for assistance or for additional copies of the Prospectus and the Letter of Transmittal may be directed to

D. F. KING & CO., INC.

2 North Riverside Plaza Chicago, Illinois 60606 (312) 263-5881 (collect)	20 Exchange Place New York, New York 10005 (212) 269-5550 (collect)	3871 Piedmont Avenue Oakland, California 94611 (415) 547-1119 (collect)

This notice is neither an offer to sell nor a solicitation of an offer to buy or exchange these securities. The Exchange Offer is made only by the Prospectus referred to above. In any jurisdiction the securities laws of which require the Exchange Offer to be made by a registered broker or dealer, the Exchange Offer is made on behalf of the Company only by registered brokers or dealers who are licensed under the laws of such jurisdiction.

White, Weld & Co.
Incorporated

One Liberty Plaza
91 Liberty Street
New York, N.Y. 10006
(212) 285-2000

PLAINTIFF'S EXHIBIT 24

Minutes of Regular Meeting of WRG Directors held on September 4, 1974

PLAINTIFF 24
30

Minutes of a Regular Meeting of the Board of Directors of Wells, Rich, Greene, Inc. held at One East End Avenue, New York New York on September 4, 1974 at 10:00 A.M.

There were present:

Mary Wells Lawrence
Charles Moss
Richard T. O'Reilly
John V. Burns
Frank G. Colnar
Frederick L. Jacobs
Martin Stern
Warren J. Kratky
Arnold M. Grant
Troy V. Post

The following Directors were absent:

Stanley G. Dragoti
Emilio Pucci

Mrs. Lawrence, Chairman of the Corporation, presided and Frederick L. Jacobs, Secretary, recorded the Minutes.

The Secretary presented copies of the Notice of the Meeting dated August 23, 1974. It was ordered that a copy of said Notice be inserted in the Minute Book. The Secretary announced that a quorum of Directors was present.

The Chairman announced that proper notice of the meeting having been given and a quorum being present the meeting would proceed with the transaction of business.

The Chairman requested Frank G. Colnar, Executive Vice President-Financial Planning to give the latest financial review of the Corporation.

The Chairman suggested that the Board of Directors declare a cash dividend. After discussion, and upon motion duly made and seconded, it was, unanimously

RESOLVED, that a regular quarterly dividend of seventeen ($.17) cents per share be and the same hereby is declared on the outstanding shares of Common Stock of the Corporation payable on October 11, 1974 to Stockholders of record at the close of business on September 30, 1974, and that the Treasurer of the Corporation be and hereby is authorized and directed to cause said dividend to be paid.

The Chairman suggested that the By-Laws of the Corporation be amended to authorize the Board of Directors or Committees thereof to act without a meeting. After discussion, and upon motion duly made and seconded, it was, unanimously

RESOLVED, that the By-Laws of the Corporation be and hereby are amended effective this date in the form annexed hereto and made part of the Minutes and the Secretary of the Corporation is hereby authorized and directed to distribute same to all appropriate parties and authorities.

Mrs. Lawrence then described in detail a proposal which she recommended for approval by the Board of Directors whereby the Company would offer to the holders of its common stock to exchange cash and a new 10% Subordinated Sinking Fund Debenture of the Company due in 1984 at a ratio of $3 cash and $8 principal amount of debentures for each one share of common stock. The exchange offer would be made for any and all duly tendered shares of common stock up to a maximum representing all the outstanding shares of common stock other than those owned by members of the Board of Directors of the Company. She pointed out that this matter had been thoroughly analyzed and described the considerations which had led to the belief that the proposed exchange offer was in the best interests of the Company.

Mr. Frank Colnar, Executive Vice President-Financial Planning, presented a summary of pro forma profit and loss statements of the Company for fiscal years into the future which reflected the consummation of the exchange offer for the maximum number of shares of common stock. At Mrs. Lawrence's request Mr. Schell, outside counsel to the Company, described the legal procedures necessary to effect the exchange offer and certain other matters to be considered by each member of the Board in determining whether or not to approve the proposal.

Members of the Board of Directors asked a number of questions of Mrs. Lawrence, Mr. Colnar and Mr. Schell. Thereupon, on a motion duly made and seconded and unanimously adopted, it was:

> RESOLVED, that the Corporation hereby approves an offer to the stockholders of the Corporation to exchange (the "Exchange Offer") cash and subordinated debentures (the "Debentures") of the Corporation for up to 1,405,008 shares of Common Stock, at the rate of $3 cash and $8 principal amount of Debentures for each share exchanged and upon such further terms and conditions as may be fixed by subsequent action of the Board of Directors; provided, however, that the Exchange Offer shall not be made to, and the members of the Board of Directors shall not participate, directly or indirectly, in, the Exchange Offer;
>
> FURTHER RESOLVED, that the Debentures shall be limited to an aggregate principal amount of $11,240,064, shall bear interest at the rate of 10% per annum and have a 10-year maturity date, shall be subject to a sinking fund requiring the Corporation to spend in cash each year over the life of the Debentures 10 per cent of the original principal amount of the issue, and shall have such further terms and conditions as may be fixed by subsequent action of the Board of Directors;

FURTHER RESOLVED, that the Exchange Offer shall not commence until the Debentures shall have been registered under the Securities Act of 1933 and all other necessary and appropriate actions relating to the Exchange Offer have been taken.

RESOLVED, that preparation of a Registration Statement on Form S-1 covering up to $11,240,064 principal amount of Debentures to be offered under the Exchange Offer, including prospectuses, exhibits and other documents to be filed with the Securities and Exchange Commission (the "Commission") for the purpose of registering the offer and sale of such Debentures under the Securities Act of 1933, is hereby approved;

FURTHER RESOLVED, that the directors and officers of the Corporation be and hereby are authorized to execute and file with the Commission on behalf of the Corporation a Registration Statement on Form S-1, including prospectuses and any and all exhibits and other documents relating thereto, and any and all amendments (including post-effective amendments) to said Registration Statement or other documents, all in such form as such directors and officers, with the advice of counsel, may deem necessary or appropriate;

FURTHER RESOLVED, that Frederick L. Jacobs be and hereby is appointed and designated as the person duly authorized to receive communications and notices from the Commission with respect to said Registration Statement;

FURTHER RESOLVED, that each director and officer who may be required to execute said Registration Statement or any amendment thereto (whether on behalf of the Corporation or as an officer or director thereof or otherwise) be and hereby is authorized to execute a power of attorney appointing Mary Wells Lawrence and Frederick L. Jacobs and each of them, his true and lawful attorneys-in-fact and agents, with full power of substitution and resubstitution for him and in his name, place and stead, in any and all capacities to sign said Registration Statement and any and all amendments (including post-effective amendments) thereto and to

file the same, with all exhibits thereto, and other documents in connection therewith, with the Commission, granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite or necessary to be done in and about the premises, as fully to all intents and purposes as he might or could do in person, hereby ratifying and confirming all the said attorneys-in-fact and agents or any of them, or their or his substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

RESOLVED, that it is desirable and in the best interest of the Corporation that its securities be qualified or registered for sale in various states; that the Chairman of the Board and Chief Executive Officer or any Vice President and the Secretary or any Assistant Secretary hereby are authorized to determine the states in which appropriate action shall be taken to qualify or register for sale all or such part of the securities of the Corporation as said officers may deem advisable; that said officers are hereby authorized to perform on behalf of the Corporation any and all such acts as they may deem necessary or advisable in order to comply with the applicable laws of any such states, and in connection therewith to execute and file all requisite papers and documents, including, but not limited to, applications, reports, surety bonds, irrevocable consents and appointments of attorneys for service of process; and the execution by such officers of any such paper or document or the doing by them of any act in connection with the foregoing matters shall conclusively establish their authority therefor from the Corporation and the approval and ratification by the Corporation of the papers and documents so executed and the action so taken.

RESOLVED, that the officers of the Corporation and each of them are hereby authorized and empowered, in the name and on behalf of the Corporation, to take any action, and to execute and deliver any and all letters, documents or other writings, that they deem appropriate or desirable to carry out the intent and purpose of each of the foregoing resolutions.

There being no further business before the Board of Directors, upon motion duly made and seconded, the meeting was adjourned.

Secretary

PLAINTIFF'S EXHIBIT 25

Letter Dated September 4, 1974, from Paul Hallingby, Jr. to Mary Wells Lawrence

TELEPHONE 212/285-2000

CABLE ADDRESS-"WHITEWELD"

BOSTON
CHICAGO
ATLANTA
DALLAS
HARTFORD
LOS ANGELES
MINNEAPOLIS
NEW HAVEN
PHILADELPHIA
SAN FRANCISCO

WHITE, WELD & CO.
INCORPORATED
ONE LIBERTY PLAZA
91 LIBERTY STREET, NEW YORK, N.Y. 10006

LONDON
PARIS
ZURICH
CARACAS
GENEVA
HONG KONG
MONTEVIDEO
MONTREAL

PAUL HALLINGBY, JR.
PRESIDENT
285-2296

September 4, 1974

Mrs. Mary Wells Lawrence, Chairman
Wells, Rich, Greene, Inc.
767 Fifth Avenue
New York, New York 10022

Dear Mary:

We are writing to confirm our views with respect to a proposed exchange offer for all of the common shares of Wells, Rich, Greene not held by members of the board of directors. We believe that such an exchange offer could be highly successful if it were made for all shares and if no minimum response were stipulated. The latter feature is essential inasmuch as the arbitrage fraternity in the financial community typically will work especially hard to effect exchanges provided there is a firm, unconditional exchange offer to work against.

We believe the package offered in exchange per share of Wells, Rich, Greene common stock should include $3 in cash and $8 principal amount of 10% subordinated sinking fund debentures due around November 1, 1984. Interest would be payable semiannually in the normal fashion and restrictive covenants would be kept to a minimum, consistent with typical issues of straight subordinated debt. The debentures would be callable at par for life. We believe this package represents fair value for Wells, Rich, Greene shares in light of current stock market conditions, the lack of investor interest in Wells, Rich, Greene stock and stocks of advertising agencies in general, current interest rates and other relevant factors.

In the interest of maximizing the marketability of the subordinated debentures we urge that they have a combined purchase fund and sinking fund requiring the company to spend in cash each year over the life of the debentures 10% of the initial principal amount of the issue. Through this purchase fund and sinking fund the company would be required by each sinking fund date to have either purchased in the open market at a discount below par, or called by lot at the sinking fund at par, enough debentures to have required an outlay of 10% of the initial issue in cash. The company would have the right to double the purchase fund and sinking fund in any given year and such right would be cumulative.

Exhibit to the Little Affidavit

Mrs. Mary Wells Lawrence 566a September 4, 1974

White, Weld & Co. Incorporated would be pleased to be dealer manager of a soliciting dealer group to seek exchanges upon effectiveness of a registration statement. We would advocate a fee for the dealer manager of 12 1/2¢ per share of stock exchanged, with a minimum fee for the dealer manager of $25,000. We advocate a soliciting dealer fee of 37 1/2¢ per share of stock bearing the name of the dealer who solicited the exchange, with no maximum in point of dollars payable for deposit by any given stockholder. As dealer manager, our firm would expect to be reimbursed for our out-of-pocket expenses including legal fees, printing, advertising, communications, etc. In connection with advertising, we would, of course, work closely with you on the program and its extent.

We look forward to working with you.

Sincerely,

Paul Hallingby, Jr.

PH:MP

PLAINTIFF'S EXHIBIT 26

Letter Dated September 25, 1974, from Wm. Brian Little to Frederick L. Jacobs, Esq.

PLAINTIFF exhibit 26 ID

TELEPHONE 212/285-2000

CABLE ADDRESS-"WHITEWELD"

BOSTON
CHICAGO
ATLANTA
DALLAS
HARTFORD
LOS ANGELES
MINNEAPOLIS
NEW HAVEN
PHILADELPHIA
SAN FRANCISCO

WHITE, WELD & CO.
INCORPORATED
ONE LIBERTY PLAZA
91 LIBERTY STREET, NEW YORK, N.Y. 10006

LONDON
PARIS
ZURICH
CARACAS
GENEVA
HONG KONG
MONTEVIDEO
MONTREAL

WM. BRIAN LITTLE
FIRST VICE PRESIDENT
285-2340

September 25, 1974

Frederick L. Jacobs, Esq.
Wells, Rich, Greene, Inc.
767 Fifth Avenue
New York, New York 10022

Dear Fred:

In connection with the pro-forma financial data which you are preparing for the Registration Statement to be filed with respect to the proposed Wells, Rich, Greene, Inc. 10% Subordinated Sinking Fund Debentures (the "Debentures"), you have requested our opinion as to the anticipated discount at which the Debentures will sell after your offer is completed.

The Prospectus states that it is anticipated that the Debentures "will trade at prices significantly below their principal amount." For the purpose of this pro-forma financial data, we think that it is a reasonable assumption that the Debentures will sell at approximately 75% of their principal amount following the exchange offer.

In arriving at this estimated discount, we took into account the terms of the Debentures, including their interest rate and sinking fund provisions, the expected average life of the Debentures, and the anticipated size of the Debenture issue. In addition, we analyzed the current market for other publicly-traded subordinated debentures of comparable quality against the background of overall conditions in the stock and bond markets, interest rates, and the Federal Reserve Board's position with respect to the prime rate. You understand, of course, that the actual selling price could vary materially from our estimate if there should be a material and unforeseen change in any of these external factors.

Sincerely,

Wm. Brian Little

WBL:mv

cc: Messrs. John T. Cardis
David C. Korpics
Roger V. Pugh, Jr. ✓
Thomas G. Schueller

PLAINTIFF'S EXHIBIT 27

Minutes of Special Meeting of WRG Directors held on October 21, 1974

PLAINTIFF Exhibit 27 IP

Minutes of a Special Meeting of the Board of Directors of Wells, Rich, Greene, Inc. held at 767 Fifth Avenue, New York, New York on October 21, 1974 at 10:00 A.M.

There were present:

Mary Wells Lawrence
Charles Moss
Richard T. O'Reilly
John V. Burns
Frank G. Colnar
Frederick L. Jacobs
Martin Stern
Stanley G. Dragoti
Warren J. Kratky
Arnold M. Grant
Emilio Pucci

The following Director was absent:

Troy V. Post

Mrs. Lawrence, Chairman of the Corporation, presided and Frederick L. Jacobs, Secretary, recorded the Minutes.

The Secretary presented copies of the Notice of the Meeting dated October 16, 1974. It was ordered that a copy of said Notice be inserted in the Minute Book. The Secretary announced that a quorum of Directors was present.

The Chairman announced that proper notice of the meeting having been given and a quorum being present the meeting would proceed with the transaction of business.

The Secretary informed the Directors that no changes were made from the draft of the Minutes sent to them of the meetings held on May 30, 1974, June 26, 1974 and September 4, 1974 and requested approval of the Minutes in that form. Upon motion duly made and seconded, it was, unanimously

RESOLVED, that the minutes of the meetings of May 30, 1974, June 26, 1974 and September 4, 1974 be and are hereby approved.

The Chairman stated that additional responsibilities in an expanding organization make it necessary and desirable to elevate certain employees to officer status. After discussion and upon motion duly made and seconded, the following were nominated and unanimously elected, effective immediately, to the office set forth opposite their respective names, to serve until the next Annual Meeting of Stockholders:

Bud Dealy	Vice President
William Luceno	Vice President
Paul Schulman	Vice President

The Chairman stated that she wished to extend the benefits of the Corporation's Medical Expense Plan to certain key employees. After discussion and upon motion duly made and seconded, the following were unanimously designated as Key Executives for the purpose of the Medical Expense Plan effective immediately:

Bud Dealy
William Luceno

The Treasurer requested the Board to authorize the Corporation to open, from time to time, a bank account or accounts or otherwise to utilize the facilities of any branch office of The Chase Manhattan Bank, N. A., Chemical Bank New York Trust Company or Morgan Guaranty Bank. After discussion, and upon motion duly made and seconded, it was, unanimously

RESOLVED, that the Corporation be and is hereby authorized to open, from time to time, a bank account or accounts or otherwise to utilize the facilities of any branch office of The Chase Manhattan Bank, N.A., Chemical Bank New York Trust Company or Morgan Guaranty Bank.

RESOLVED FURTHER, that Mary Lawrence and Frederick L. Jacobs be and hereby are authorized to sign singly for any such bank account or facility.

The Chairman stated that since the announcement of the Exchange Offer, there has been public and stockholder reaction thereto. The Chairman stated that it would be appropriate at this time to have a further discussion of the Exchange Offer and its purposes. The background and business reasons from the Exchange Offer were discussed at length.

The Chairman requested Mr. Frank G. Colnar-Executive Vice President-Financial Planning to give a report as to surplus available for the reacquisition of Common Stock pursuant to the Exchange Offer.

After discussion, and upon motion duly made and seconded, it was, unanimously

RESOLVED, that the Board of Directors hereby reaffirms its authorization and approval of an offer (the "Exchange Offer") by the Corporation to the stockholders of the Corporation (exclusive of the members of the Board of Directors) to exchange cash and 10% subordinated debentures of the Corporation for up to 1,405,008 shares of Common Stock, at the rate of $3 cash and $8 principal amount of Debentures for each share exchanged;

FURTHER RESOLVED, that the Exchange Offer shall not commence until after the registration statement covering the Debentures shall have become effective under the Securities Act of 1933 and all other necessary and appropriate actions relating to the Exchange Offer shall have been taken;

FURTHER RESOLVED, that the Exchange offer shall be made only by the Prospectus included in such registration statement and shall have such terms, and shall be subject to such conditions, as shall be set forth in the Prospectus.

The Chairman stated that each of the members of the Board of Directors had previously been furnished with a copy of the Registration Statement dated October 3, 1974, together with a letter from Mr. Jacobs outlining the responsibilities and potential liabilities of the Company and the directors under the Securities Act of 1933. The Chairman requested Mr. Orville Schell, outside counsel to the Company, to elaborate upon these matters. Thereafter, the Registration Statement and certain proposed revisions therein were reviewed in detail.

After discussion, and upon motion duly made and seconded, it was, unanimously

RESOLVED, that the actions of the officers of the Company in executing and filing with the Securities and Exchange Commission, for and on behalf of the Company, Registration Statement No. 2-52095 covering $11,240,064 aggregate principal amount of 10% Subordinated Sinking Fund Debentures due 1984 (the "Debentures") are hereby in all respects ratified, approved and confirmed; and

FURTHER RESOLVED, that the proper officers of the Company are hereby authorized and directed to execute and file with the Securities and Exchange Commission, for and on behalf of the Company, and and all amendments (including post-effective amendments) and supplements to said Registration Statement and any and all exhibits and other documents relating thereto as such officers, with the advice of counsel, may deem necessary or appropriate.

The Chairman states that in addition to a Prospectus, it was proposed to distribute to stockholders a form of Letter of Transmittal, to be completed and returned, together with stock certificates, by stockholders who wished to participate in the Exchange Offer. Upon a motion duly made, seconded and unanimously adopted, it was

RESOLVED, that the form of the proposed Letter of Transmittal presented to this meeting is hereby approved, with such changes therein as are approved by officers of the Company; and

FURTHER RESOLVED, that the officers of the Company are authorized on behalf of the Company to waive failures by tendering stockholders to complete their Letters of Transmittal in accordance with the instructions thereto and any other defects or irregularities in connection with tenders which, in the judgment of such officer and with the advice of counsel, are deemed insubstantial.

The Chairman then explained that the Debentures would be issued pursuant to an Indenture between the Company and The Chase Manhattan Bank, N.A., as Trustee. After a discussion of the terms and provisions of the proposed Indenture and of the Debentures, upon a motion duly made and seconded and unanimously adopted, it was:

RESOLVED, that the form of the proposed Indenture, presented to this meeting, between the Company and The Chase Manhattan Bank, N.A., as Trustee, under which the Company is to issue the Debentures, is hereby approved and that the Chairman, the President, the Vice-Chairman or any Executive or Senior Vice-President, and each of them, is hereby authorized on behalf of the Company to execute and deliver the Indenture, under the seal of the Company, attested by the Secretary or an Assistant Secretary, with such changes therein and additions thereto as the officer or officers executing such Indenture may deem necessary, appropriate or desirable, as conclusive evidence by her or his or their execution thereof;

FURTHER RESOLVED, that the form of Debenture contained in the form of Indenture presented to this meeting is hereby approved with such changes, if any, as may be approved by the officer or officers whose signatures or facsimile signatures shall appear thereon, such approval to be conclusively evidenced by her or his or their signatures on the Debentures;

FURTHER RESOLVED, that the Chairman, the President, the Vice-Chairman, or any Executive or Senior Vice President of the Company, and each of them, by her or his signature or a facsimile thereof, are hereby authorized in the name and on behalf of the Company and under its corporate seal attested by the Secretary or one of the Assistant Secretaries by his signature or a facsimile thereof, to execute up to $11,240,064 aggregate principal amount of Debentures in definitive form, and to deliver said Debentures to the Trustee under the Indenture for authentication and delivery in accordance with the terms thereof, and that the Trustee is hereby authorized and directed to authenticate and deliver the same to or upon the request of the Company as provided in the Indenture;

FURTHER RESOLVED, in case any officer of the Company who shall have signed any of the Debentures, manually or in facsimile, shall cease to be such officer before the Debentures so signed shall have been authenticated and delivered by the Trustee under the Indenture, or disposed of by the Company, such Debentures nevertheless may be authenticated and delivered or disposed of as though the person who signed such Debentures had not ceased to be such officer of the Company; and

FURTHER RESOLVED, that The Chase Manhattan Bank, N.A. is hereby appointed Paying Agent for the purpose of payment of principal and interest in accordance with the provisions of the Indenture and the Debentures, in the forms in which they shall be executed and delivered pursuant to the foregoing resolutions; provided, however, that the Company may at any time elect to act as its own Paying Agent or appoint additional or substitute Paying Agents; and

FURTHER RESOLVED, that the Chairman, the President, the Vice-Chairman or any Executive or Senior Vice President, and each of them, are hereby authorized on behalf of the Company to purchase, or arrange for the purchase of, Debentures in connection with the sinking fund under the provisions of the Indenture.

The Chairman then discussed proposed agreements with White, Weld & Co. Incorporated as Dealer Manager for the Exchange Offer and with The Chase Manhattan Bank, N.A. as Exchange Agent. Upon a motion duly made, seconded and unanimously adopted, it was

RESOLVED, that the forms of the following agreements presented to this meeting are hereby approved and that the Chairman, President, Vice-Chairman or any Executive or Senior Vice President of the Company, and each of them, are hereby authorized on behalf of the Company to execute and deliver the following instruments in the forms presented to this meeting:

(a) a Dealer Manager Agreement between the Company and White, Weld & Co. Incorporated,

(b) an Exchange Agent Agreement between the Company and The Chase Manhattan Bank, N.A., in each case with such changes and additions, if any, as may be approved by the officer or officers executing the particular agreement, such approval to be conclusively evidenced by her, his or their execution of the agreement.

The Chairman proposed that the Company make application for listing of the Debentures on the American Stock Exchange and referred to the fact that in connection with such listing it would be necessary for the Company to register the Debentures with the Securities and Exchange Commission pursuant to Section 12(b) of the Securities Exchange Act of 1934. Upon a motion duly made and seconded and unanimously adopted, it was

RESOLVED, that application be made to the American Stock Exchange for the listing of the 10% Subordinated Sinking Fund Debentures due November 1, 1984 of the Company and that Mary Wells Lawrence and Frederick L. Jacobs and each of them are hereby authorized and directed by the Company to sign, on its behalf, the aforementioned application and any listing agreements or documents required by said Exchange in conjunction therewith and to make such changes in any of same as may be necessary to conform with the requirements for listing, and to appear (if requested) before officials of said Exchange; and

FURTHER RESOLVED, that the officers of the Company are hereby authorized and directed in the name and on behalf of the Company to prepare, execute and file with the Securities and Exchange Commission a Registration Statement on Form 8-A, or such other

> form as counsel may advise, and any and all exhibits and other documents relating thereto or required by law or regulation in connection therewith, in order to effect the registration under the Securities Exchange Act of 1934 of the Debentures, and any and all amendments to said Registration Statement, all in such form as the officers executing the same, with the advice of counsel, may deem necessary or desirable.

The Chairman proposed that the shares of Common Stock reacquired by the Company pursuant to the Exchange Offer be cancelled and thereby restored to the status of authorized but unissued shares. Thereupon, upon a motion duly made and seconded and unanimously adopted, it was:

> RESOLVED, that shares of Common Stock re-acquired by the Company pursuant to the Exchange Offer shall be cancelled and thereby restored to the status of authorized but unissued shares.

It was suggested that the officers of the Company be given general authority to carry out the purposes of the foregoing resolutions. Upon a motion duly made, seconded and unanimously adopted, it was

> RESOLVED, that the appropriate officers of the Company are hereby authorized and empowered, in the name and on behalf of the Company, to take any action, and to execute, by manual or facsimile signature, and deliver any and all letters, documents or other writings that they deem necessary, appropriate or desirable to carry out the purposes and intent of each and all of the foregoing resolutions.

There being no further business before the Board of Directors, upon motion duly made and seconded, the meeting was adjourned.

Secretary

PLAINTIFF'S EXHIBIT 28

Letter Dated January 3, 1974, from Mary Lawrence to Arnold M. Grant, Esq., with enclosures

PLAINTIFF Exhibit 28 IP

Wells, Rich, Greene Inc. / 767 Fifth Avenue / New York, N.Y. 10022 / Plaza 8-4300

January 3, 1974

Arnold M. Grant, Esq.
Compensation Committee Chairman
477 Madison Avenue
New York, New York

Dear Mr. Grant:

I am enclosing herewith to you and the members of your Committee my recommendations for awards pursuant to the Company's Executive Incentive Plan (the "Plan") and the Officers' Deferred Incentive Program (the "Program").

The Company's auditors, Haskins & Sells, have informed us that the amount of the net earnings from operations by the Company and its subsidiaries, before deduction for income taxes, for the Plan Year ended October 31, 1973 is $7,423,806.21. Accordingly, the Annual Fund available for grants of awards is $742,380.62. The Program requires that fifteen (15%) percent of this Annual Fund or $111,357.09 be made available for awards to eligible officers thereunder.

Please note that the recommendations for awards contained in this letter meet with the allowable limitations and other requirements set forth in the Phase IV Pay Regulations.

I recommend that the Compensation Committee grant cash awards as indicated to the following executives pursuant to the Executive Incentive Plan:

Name	Title	Amount
Charles Moss	President	$30,000
Richard T. O'Reilly	Executive Vice President	15,000
John V. Burns	Senior Vice President	10,000
Frank G. Colnar	Senior Vice President	15,000
Frederick L. Jacobs	Senior Vice President	15,000
Martin Stern	Senior Vice President	10,000
	Total	$95,000

The Board of Directors,

In addition, I recommend that the Compensation Committee grant awards, as indicated, to the following eligible employees who by their efforts have produced outstanding results for the Agency, such awards to be held by the Company in accordance with the Officers' Deferred Incentive Program.

Name	Title	Amount
George D'Amato	Vice President	$13,362.85
Herb Green	Vice President	13,362.85
Lewis Wechsler	Vice President	13,362.85
Clyde A. Wolfe	Vice President	13,362.85
William McGivney	Vice President	8,908.57
Martin Mitchell	Vice President	8,908.57
Bert Neufeld	Vice President	8,908.57
Arnold Weinrib	Vice President	8,908.57
Hal Altman	Vice President	4,454.28
Richard Freedman	Vice President	4,454.28
Robert Igiel	Vice President	4,454.28
Gerald Kessler	Vice President	4,454.28
Maurice Mahler	Vice President	4,454.29
	Total	$111,357.09

Pursuant to the Company's employment agreements with Stewart Greene and myself, as heretofore approved by the Committee and the Board of Directors, Mr. Greene and I shall receive for the current Plan Year awards of $26,280.27 and $185,595.16, respectively.

If the Committee grants the awards as recommended herein, a total sum of $418,232.52 will have been used for awards from the Annual Fund for the current Plan Year thereby returning a balance of $324,148.10 for use by the Company as general purpose funds.

Copies of the Executive Incentive Plan and the Officers' Deferred Incentive Program are enclosed for your convenience.

If the recommendations contained herein are acceptable to you, will you kindly give your approval by signing the letter in the space provided. Please return the signed copy of this letter to me at your earliest convenience.

Very truly yours,

Mary Lawrence
Chairman

Mary Lawrence

cc: Mr. Troy V. Post
Mr. Emilio Pucci

enc:

Awards Approved

Emilio Pucci

Arnold M. Grant.

As Amended by Stockholders -
March 10, 1971

WELLS, RICH, GREENE, INC.
EXECUTIVE INCENTIVE PLAN

1. OBJECTIVES

In pursuance of the policy of Wells, Rich, Greene, Inc. (the "Agency") to provide incentive to key executive employees by enabling them to participate in the success of the Agency and its subsidiaries, the Agency, in accordance with this Executive Incentive Plan (the "Plan"), may make Incentive Awards ("Awards") in each fiscal year ("Plan Year") of the Agency to key executive employees of the Agency and its subsidiaries.

2. ADMINISTRATION OF THE PLAN

The Plan shall be administered by the Agency's Compensation Committee (the "Committee") which shall consist of at least three directors, the majority of whom shall be directors who are not employees of the Agency. The Committee shall have authority to interpret the Plan, to adopt such rules and regulations to carry out the Plan as it may deem advisable and to make determinations which shall be final and binding upon all persons.

3. INCENTIVE AWARD ANNUAL FUND

As soon as possible after the close of each Plan Year, the Agency's independent public accountants shall certify to

the Committee the amount of net earnings of the Agency and its consolidated subsidiaries for the Plan Year just closed from operations, before any deduction for income taxes, whether Federal, state, or local and whether domestic or foreign, and before provision for such Plan Year for any Awards under the Plan. The Committee shall credit 10% of such amount (the "Annual Fund") for use in granting awards under the Plan for such Plan Year. To the extent that the entire Annual Fund so credited for any Plan Year is not used for the granting of Awards for such Plan Year, the Annual Fund shall be debited and the appropriate account of the Agency shall be credited in such amount, which shall not be available for Awards for subsequent Plan Years.

4. DETERMINATION OF CANDIDATES

The individuals to be granted Awards for any Plan Year shall be the Chief Executive Officer and any employees who are to be granted Awards pursuant to employment agreements approved by the Board of Directors of the Agency. In addition, such of the other employees of the Agency as the Committee designates as key executive employees who are expected to contribute or have contributed to a substantial degree to the success of the Agency during such Plan Year shall be eligible to be granted Awards ("Candidates"). Designation does not guarantee to any Candidate that the Committee will grant an Award to him for such Plan Year.

5. GRANT OF AWARDS

Within 60 days after the certification by the Agency's independent public accountants as described in Paragraph 3 and out of the Annual Fund credited for such Plan Year, the Committee shall:

A. Grant an Award to the Chief Executive Officer equal to 25% of such Annual Fund;

B. Grant awards pursuant to employment agreements approved by the Board of Directors of the Agency; and

C. Grant awards to such of the Candidates and in such amounts as the Committee shall determine. At the same time, the Committee shall also provide, in accordance with Paragraph 6, for the manner of payment of such Awards.

No individual shall be granted an Award in excess of his compensation for the Plan Year for which the Award is made. An individual's compensation for a Plan Year shall include his salary and deferred compensation with respect to services during such Plan Year.

6. MANNER OF PAYMENT OF AWARDS

All Awards shall be paid in cash, and at such times and upon such terms and conditions as may be determined by the Committee.

7. ELECTIONS BY CANDIDATES

The Committee shall request that each individual to be granted an Award as described in Paragraph 4 and each Candidate, subject to such limitations as the Committee may determine, submit to the Committee his irrevocable election in writing as to the number of payments in which his Award, if any, shall be made, the time or times of such payments and, where multiple payments have been elected, the proportional amounts of such payments. The election must be submitted to the Committee prior to the beginning of the Plan Year for which the Award may be granted. The Committee in its discretion may follow in whole or in part, or may decide not to follow, such an election.

8. DEATH OF RECIPIENT OF AWARD

In the event of the death of a recipient of an Award, any unpaid portion of his Award shall be paid to his legal representative at the time that his Award would have been paid if such individual were living, or at such earlier time as the Committee in its discretion shall determine.

9. AMENDMENT OR TERMINATION OF THE PLAN

The Board of Directors in its sole discretion may discontinue the Plan at any time and may from time to time amend or revise the terms of the Plan; provided, however, that no such amendment or revision which increases the potential cost of the

Plan by a substantial amount shall be made unless approved by the stockholders.

10. GENERAL PROVISIONS

No individual to whom an Award has been made shall have any right to receive the Award other than the right to receive the Award at the time specified by the Committee. Such right to receive the Award shall not be transferable except by will or by the laws of descent and distribution. Each payment of an Award shall be made from the general funds of the Agency and neither the Annual Fund nor any part thereof shall be represented by any special or separate fund. Neither the adoption of this Plan nor its operation shall in any way affect the right and power of the Agency or its subsidiaries to dismiss or discharge any employee at any time.

11. EFFECTIVE DATE OF THE PLAN

This amended Plan shall become effective on November 1, 1970.

11. Effective Date of the Program

This Program shall be effective as of November 1, 1972.

OFFICERS' DEFERRED INCENTIVE PROGRAM

Wells, Rich, Greene, Inc.

1. Introduction

Wells, Rich, Greene, Inc. (the "Agency") has established the following Officers' Deferred Incentive Program (the "Program") as a means of providing financial incentives to key executive employees in accordance with the terms of the Agency's Executive Incentive Plan (the "Plan").

2. Administration of the Program

A committee (the "Program Committee") composed of Senior Officers representing all departments of the Agency shall be appointed by the Chairman of the Board (who shall not be a member thereof) for the purpose of recommending to the Chairman the amount of Awards hereunder and the recipients thereof. The recommendations shall be forwarded to the Chairman within 30 days after the establishment of the Program Fund hereinafter provided for.

3. Award Fund

As soon as practicable after the close of each fiscal year a "Program Fund" equal in amount to a *minimum* of 1.5% of the Agency's net earnings shall be made available for use in granting Awards under the Program. The term "net earnings" shall mean the figure certified by the Agency's independent certified public accountants as being the net earnings of the Agency and its consolidated subsidiaries for the fiscal year just closed from operations, before any deductions for income taxes, whether federal, state or local, and whether domestic or foreign, and before provision for such fiscal year for any Awards under this Program and the Plan.

4. Eligibility

As of the effective date of the Program all employees who are officers of the Agency (except senior vice presidents and above) shall be deemed eligible for Awards hereunder (Eligible Employees). Thereafter employees become Eligible Employees when they are elected officers of the Agency.

5. Grant of Awards

As soon as practicable after receipt of the Program Committee's recommendations, the Chairman shall forward recommendations to the Agency's Compensation Committee.

6. Vesting of Awards

An Award, including any increase in an Award resulting from an allocation of forfeitures, will be vested as follows: (a) 50% three years after the employee first became an officer of the Agency, (b) 75% four years after the employee first became an officer of the Agency and (c) 100% five years after the employee first became an officer of the Agency. It is intended that the vesting period may commence prior to the effective date of the Program. The appropriate percentage of an Award made after a vesting date will immediately vest. If an employee's employment with the Agency and/or a subsidiary is terminated for any reason other than death or disability, the unvested portion of his Award will be forfeited. In the event of death or disability, as determined by the Compensation Committee, while in the employ of the Agency and/or a subsidiary, Awards previously granted to the employee will fully vest and will be paid to the employee or to his legal representatives in accordance with paragraph 8 hereof.

7. Forfeitures

As of the end of each fiscal year, the Compensation Committee will allocate forfeitures occurring during that fiscal year pursuant to paragraph 6 hereof, to employees who are then employed by the Agency or a subsidiary and who were granted an Award for the same fiscal year for which the forfeited Awards were granted ("Award Year"). The forfeitures shall be allocated among such employees in the proportion that each of such employee's Award for that Award Year bears to the total Awards for that Award Year which have not been forfeited.

8. Payment of Awards

Payment of the vested portion of the Awards shall be made in cash, annually, in equal installments, over a period of 5 years commencing on the January 1 next following the date of termination of employment; provided, however, that the Compensation Committee, in its sole discretion, may accelerate the payment of all or any part of the vested portion of the Award to a date no earlier than the date of termination of employment.

9. General Provisions

No Award shall be transferable except by will or by the laws of descent and distribution. Each payment of an Award shall be made from the general funds of the Agency and neither the Program Fund nor any part thereof shall be represented by any special or separate fund. Neither the adoption of this Program nor its operation shall in any way affect the right and power of the Agency or its subsidiaries to dismiss or discharge any employee at any time.

10. Amendment or Termination of the Program

The Agency, in its sole discretion, may discontinue the Program at any time and may from time to time amend or revise the terms of the Program. However, the Agency may not revoke or alter an outstanding Award in any manner unfavorable to an employee.

HASKINS & SELLS
CERTIFIED PUBLIC ACCOUNTANTS

TWO BROADWAY
NEW YORK 10004

January 7, 1974

The Compensation Committee of
The Board of Directors,
Wells, Rich, Greene, Inc.,
767 Fifth Avenue,
New York, New York 10022.

Dear Sirs:

We have examined the consolidated financial statements of Wells, Rich, Greene, Inc. (the "Agency") and subsidiary companies for the year ended October 31, 1973 and have rendered our opinion thereon dated January 7, 1974. Such opinion is qualified as follows:

"Included in the consolidated balance sheet are deferred costs relating to a motion picture joint venture, scripts and other creative productions. Although management is of the opinion that all deferred costs will be recovered from revenues expected to be derived from the related productions, the ultimate future realization of such costs is not presently determinable.

In our opinion, except for the effects, if any, on the financial statements of the matter discussed in the preceding paragraph, the accompanying financial statements present fairly the financial position of the companies at October 31, 1973 and 1972 and the results of their operations and the changes in their financial position for the years then ended, in conformity with generally accepted accounting principles applied on a consistent basis."

As a part of our examination of the consolidated financial statements of the Agency and subsidiary companies for the year ended October 31, 1973, we have examined the accompanying schedule of net earnings from operations as defined in the Executive Incentive Plan (adopted by stockholders on August 20, 1968 and amended March 10, 1971) for such year.

The Compensation Committee of
The Board of Directors,
Wells, Rich, Greene, Inc.

January 7, 1974

In our opinion, except for the effects, if any, of the matter discussed in the second and third paragraphs above, such schedule presents fairly the amount of net earnings from operations for the year ended October 31, 1973 as defined in the Executive Incentive Plan.

Yours truly,

Haskins & Sells

EXECUTIVE INCENTIVE PLAN OF
WELLS, RICH, GREENE, INC.

COMPUTATION OF AMOUNT OF NET EARNINGS FROM
OPERATIONS AS DEFINED IN THE EXECUTIVE INCENTIVE PLAN
FOR THE YEAR ENDED OCTOBER 31, 1973

NET INCOME OF THE AGENCY AND SUBSIDIARY COMPANIES FOR THE YEAR ENDED OCTOBER 31, 1973.....		$3,375,077
ADDITIONS:		
Provision for Federal and state income taxes..	$3,630,553	
Provision for Executive Incentive Plan awards.	418,176	4,048,729
NET EARNINGS FROM OPERATIONS (AS DEFINED IN THE EXECUTIVE INCENTIVE PLAN) FOR THE YEAR ENDED OCTOBER 31, 1973.....		$7,423,806

PLAINTIFF'S EXHIBIT 29

Letter Dated January 4, 1973, from Haskins & Sells, with enclosure

PLAINTIFF Exhibit 29 IP

HASKINS & SELLS

CERTIFIED PUBLIC ACCOUNTANTS

TWO BROADWAY
NEW YORK 10004

January 4, 1973

The Compensation Committee of
The Board of Directors,
Wells, Rich, Greene, Inc.,
767 Fifth Avenue,
New York, New York 10022.

Dear Sirs:

We have examined the consolidated financial statements of Wells, Rich, Greene, Inc. (the "Agency") and subsidiary companies for the year ended October 31, 1972 and have rendered our opinion (which is qualified as therein set forth) thereon dated January 4, 1973.

As a part of our examination of the consolidated financial statements of the Agency and subsidiary companies for the year ended October 31, 1972, we have examined the accompanying schedule of net earnings from operations as defined in the Executive Incentive Plan (adopted by stockholders on August 20, 1968 and amended March 10, 1971), for such year.

In our opinion, such schedule presents fairly the amount of net earnings from operations for the year ended October 31, 1972 as defined in the Executive Incentive Plan.

Yours truly,

Haskins & Sells

EXECUTIVE INCENTIVE PLAN OF
WELLS, RICH, GREENE, INC.

COMPUTATION OF AMOUNT OF NET EARNINGS FROM
OPERATIONS AS DEFINED IN THE EXECUTIVE INCENTIVE PLAN,
YEAR ENDED OCTOBER 31, 1972

ET INCOME OF THE AGENCY AND SUBSIDIARY COMPANIES FOR THE YEAR ENDED OCTOBER 31, 1972.....		$3,009,863
DDITIONS:		
Provision for Federal and state income taxes.....	$3,095,594	
Provision for Executive Incentive Plan awards.....	259,614	3,355,208
T EARNINGS FROM OPERATIONS (AS DEFINED IN THE EXECUTIVE INCENTIVE PLAN) FOR THE YEAR ENDED OCTOBER 31, 1972.....		$6,365,071

PLAINTIFF'S EXHIBIT 30

Letter Dated January 12, 1972, from Haskins & Sells, with enclosure

PLAINTIFF Exhibit 30 ED

HASKINS & SELLS
CERTIFIED PUBLIC ACCOUNTANTS

TWO BROADWAY
NEW YORK 10004

January 12, 1972

The Compensation Committee of
The Board of Directors,
Wells, Rich, Greene, Inc.,
767 Fifth Avenue,
New York, New York 10022.

Dear Sirs:

We have examined the consolidated financial statements of Wells, Rich, Greene, Inc. (the "Agency") and subsidiary companies for the year ended October 31, 1971 and have rendered our opinion (which is qualified as therein set forth) dated January 12, 1972.

As a part of our examination of the consolidated financial statements of the Agency and subsidiary companies for the year ended October 31, 1971, we have examined the accompanying schedule of net earnings from operations as defined in the Executive Incentive Plan (adopted by stockholders on August 20, 1968 and amended March 10, 1971), for such year.

In our opinion, such schedule presents fairly the amount of net earnings from operations for the year ended October 31, 1971 as defined in the Executive Incentive Plan.

Yours truly,

Haskins & Sells

EXECUTIVE INCENTIVE PLAN OF
WELLS, RICH, GREENE, INC.

COMPUTATION OF AMOUNT OF NET EARNINGS FROM
OPERATIONS AS DEFINED IN THE EXECUTIVE INCENTIVE PLAN,
YEAR ENDED OCTOBER 31, 1971

ET INCOME OF THE AGENCY AND SUBSIDIARY COMPANIES FOR THE YEAR ENDED OCTOBER 31, 1971.....		$2,619,006
DDITIONS:		
Provision for Federal and state income taxes.....	$3,435,158	
Provision for Executive Incentive Plan awards.....	181,487	3,616,645
T EARNINGS FROM OPERATIONS (AS DEFINED IN THE EXECUTIVE INCEN-TIVE PLAN) FOR THE YEAR ENDED OCTOBER 31, 1971.....		$6,235,651

PLAINTIFF'S EXHIBIT 31

Letter Dated January 5, 1971, from Haskins & Sells, with enclosure

PLAINTIFF Exhibit 31 ED

HASKINS & SELLS
CERTIFIED PUBLIC ACCOUNTANTS

TWO BROADWAY
NEW YORK 10004

January 5, 1971

The Compensation Committee of
The Board of Directors,
Wells, Rich, Greene, Inc.,
767 Fifth Avenue,
New York, New York 10022.

Dear Sirs:

We have examined the consolidated financial statements of Wells, Rich, Greene, Inc. (the "Company") and subsidiary companies as of October 31, 1970 and for the year then ended, and have rendered our report thereon dated January 5, 1971. Our examination also comprehended the examination of the financial statements of the Company (excluding all subsidiaries) for the year ended October 31, 1970 on which we have not reported separately.

As a part of our examination of the financial statements of the Company for the year ended October 31, 1970, we have examined the accompanying schedule of net earnings from operations, as defined in the Executive Incentive Plan (adopted by stockholders on August 20, 1968), for such year.

In our opinion, the accompanying schedule presents fairly the amount of net earnings from operations for the year ended October 31, 1970 as defined in the Executive Incentive Plan.

Yours truly,

Haskins & Sells

EXECUTIVE INCENTIVE PLAN OF
WELLS, RICH, GREENE, INC.

COMPUTATION OF AMOUNT OF NET EARNINGS FROM
OPERATIONS AS DEFINED IN THE EXECUTIVE INCENTIVE PLAN,
YEAR ENDED OCTOBER 31, 1970

NET INCOME OF THE COMPANY FOR THE YEAR ENDED OCTOBER 31, 1970, INCLUDED IN THE CONSOLIDATED NET INCOME FOR SUCH YEAR.....		$1,885,749
ADDITIONS:		
Provision for Federal and state income taxes.	$2,075,075	
Provision for Plan awards.....	122,500	2,197,575
NET EARNINGS FROM OPERATIONS (AS DEFINED IN THE EXECUTIVE INCENTIVE PLAN) FOR THE YEAR ENDED OCTOBER 31, 1970.....		$4,083,324

PLAINTIFF'S EXHIBIT 32

Three Letters Dated June 26, 1974, Signed "Options and Terms Approved" respectively by Arnold M. Grant, Troy V. Post and Emilio Pucci

PLAINTIFF Exhibits 32 & 33 JUNE 26, 1974

Wells, Rich, Greene, Inc. / 767 Fifth Avenue / New York, N.Y. 10022 / Plaza 8-4300

June 26, 1974

Arnold M. Grant, Esq.
Compensation Committee, Chairman
477 Madison Avenue
New York, New York 10021

Dear Mr. Grant:

Mrs. Lawrence has asked me to forward to you and the members of your Committee, for consideration by the Committee, management's recommendation for awards of stock option grants to Charles Moss, President and Frederick L. Jacobs, Executive Vice President, to purchase 20,000 and 5,000 shares, respectively, of the Corporation's Common Stock.

Messrs. Moss and Jacobs were previously awarded the following stock option grants pursuant to the Stock Option Plan:

Date of Grant	# of Shares	Purchase Price	Type of Option	Expiration Date
CHARLES MOSS				
6/27/69	10,000	$14.00	Qualified	6/26/74
5/10/71	7,500	20.50	Tandem	5/9/76, 5/9/81
8/21/72	13,750	22.75	Tandem	8/20/77, 8/20/82
FREDERICK L. JACOBS				
5/10/71	7,500	$20.50	Tandem	5/9/76, 5/9/81
8/21/72	5,000	22.75	Tandem	8/20/77, 8/20/82

It is requested that any option granted be in accordance with the terms of the Stock Option Plan, as amended, and contain the following provisions:

1. That they be non-qualified options.

2. That the option price be 100% of the fair market value on the date on which the option is granted.

3. That one third of the option granted may be exercised after six months from the date granted, one third eighteen months from the date granted and one third thirty months from the date granted.

4. That the rights to exercise a non-qualified option shall expire not later than ten years from the date on which the option is granted.

5. That, since these options are for more than 5,000 shares, when exercised they may be paid for in installments subject to appropriate governmental regulations with regard to such installments and that interest on any unpaid installments shall be at the rate of 4% per annum.

For your further information, I am enclosing herewith a current summary of the Stock Options.

If the recommendations are acceptable to you, will you kindly indicate your approval by signing the letter in the space provided. Please return a signed copy of this letter to me at your earliest convenience.

Very truly yours,

Frank G. Colnar

Frank G. Colnar
Executive Vice President

enc.

cc: Mr. Troy V. Post
Mr. Emilio Pucci

Options and Terms Approved:

Emilio Pucci

Wells Rich Greene Inc / 767 Fifth Avenue / New York, N.Y. 10022 / Plaza 8-4300

June 26, 1974

Arnold M. Grant, Esq.
Compensation Committee, Chairman
477 Madison Avenue
New York, New York 10021

Dear Mr. Grant:

Mrs. Lawrence has asked me to forward to you and the members of your Committee, for consideration by the Committee, management's recommendation for awards of stock option grants to Charles Moss, President and Frederick L. Jacobs, Executive Vice President, to purchase 20,000 and 5,000 shares, respectively, of the Corporation's Common Stock.

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8/21/72	13,750	22.75	Tandem	8/20/77, 8/20/82
FREDERICK L. JACOBS				
5/10/71	7,500	$20.50	Tandem	5/9/76, 5/9/81
8/21/72	5,000	22.75	Tandem	8/20/77, 8/20/82

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1. That they be non-qualified options.

2. That the option price be 100% of the fair market value on the date on which the option is granted.

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Very truly yours,

Frank G. Colnar

Frank G. Colnar
Executive Vice President

enc.

cc: Mr. Troy V. Post
Mr. Emilio Pucci

Options and Terms Approved:

Wells, Rich, Greene, Inc. / 767 Fifth Avenue / New York, N.Y. 10022 / Plaza 8-4300

June 26, 1974

Arnold M. Grant, Esq.
Compensation Committee, Chairman
477 Madison Avenue
New York, New York 10021

Dear Mr. Grant:

Mrs. Lawrence has asked me to forward to you and the members of your Committee, for consideration by the Committee, management's recommendation for awards of stock option grants to Charles Moss, President and Frederick L. Jacobs, Executive Vice President, to purchase 20,000 and 5,000 shares, respectively, of the Corporation's Common Stock.

Messrs. Moss and Jacobs were previously awarded the following stock option grants pursuant to the Stock Option Plan:

Date of Grant	# of Shares	Purchase Price	Type of Option	Expiration Date
CHARLES MOSS				
6/27/69	10,000	$14.00	Qualified	6/26/74
5/10/71	7,500	20.50	Tandem	5/9/76,5/9/81
8/21/72	13,750	22.75	Tandem	8/20/77, 8/20/82
FREDERICK L. JACOBS				
5/10/71	7,500	$20.50	Tandem	5/9/76, 5/9/81
8/21/72	5,000	22.75	Tandem	8/20/77, 8/20/82

It is requested that any option granted be in accordance with the terms of the Stock Option Plan, as amended, and contain the following provisions:

1. That they be non-qualified options.

2. That the option price be 100% of the fair market value on the date on which the option is granted.

3. That one third of the option granted may be exercised after six months from the date granted, one third eighteen months from the date granted and one third thirty months from the date granted.

4. That the rights to exercise a non-qualified option shall expire not later than ten years from the date on which the option is granted.

5. That, since these options are for more than 5,000 shares, when exercised they may be paid for in installments subject to appropriate governmental regulations with regard to such installments and that interest on any unpaid installments shall be at the rate of 4% per annum.

For your further information, I am enclosing herewith a current summary of the Stock Options.

If the recommendations are acceptable to you, will you kindly indicate your approval by signing the letter in the space provided. Please return a signed copy of this letter to me at your earliest convenience.

Very truly yours,

Frank G. Colnar

Frank G. Colnar
Executive Vice President

enc.

cc: Mr. Troy V. Post
Mr. Emilio Pucci

Options and Terms Approved:

Arnold M. Grant

PLAINTIFF'S EXHIBIT 33

Three Letters Dated April 16, 1974, Signed "Options and Terms Approved" respectively by Arnold M. Grant, Troy V. Post and Emilio Pucci

PLAINTIFF Exhibit 33 dp April 18, 1974

Wells, Rich, Greene, Inc. / 767 Fifth Avenue / New York, N.Y. 10022 / Plaza 8-4300

April 16, 1974

Arnold M. Grant, Esq.
Compensation Committee Chairman
477 Madison Avenue
New York, New York 10021

Dear Mr. Grant:

Mrs. Lawrence has asked me to forward to you and to the members of your Committee for consideration by the Committee, management's recommendations for the following award of a stock option grant:

Name	Descriptive Title	Employment History Began	Salary	Stock Options Requested
Dick Jackson	Executive Vice President-Creative Director of Gardner Advertising Company, Incorporated	4-8-74	$65,000	4,000

At the time Mr. Jackson joined the Company, it was agreed that this recommendation would be made.

It is requested that any options granted be in accordance with the terms of the Stock Option Plan, as amended and contain the following provisions:

1. That they be qualified options.

2. That one third of the options granted may be exercised after six months from the date granted, one third eighteen months from the date granted and one third thirty months from the date granted.

3. That the rights to exercise qualified options shall expire not later than five years from the date on which the option is granted.

4. That the option price be 100% of the fair market value on the date on which the option is granted.

shall expire not later than

April 16, 1974

For your further information, I am enclosing herewith a current summary of the Stock Options.

If the recommendation is acceptable to you, will you kindly indicate your approval by signing the letter in the space provided. Please return a signed copy of this letter to me at your earliest convenience.

Very truly yours,

Frederick L. Jacobs
Secretary

enc.

cc: Mr. Troy Post
Mr. Emilio Pucci

Options and Terms Approved:

WELLS, RICH GREENE, INC.

SUMMARY OF STOCK OPTION PLAN

April 18, 1974

AMOUNT APPROVED BY STOCKHOLDERS	
AUGUST 1968	50,000
MAY 1969	35,000
MARCH 1971	250,000
MARCH 1972	28,750
TOTAL AVAILABLE	363,750
ISSUED TO DATE	346,544
BALANCE AVAILABLE	17,206

SUMMARY

Options Exercised to Date		25,785
Stock Subject to Option		320,759
Balance Available for Option		17,206
TOTAL		363,750
Total Issued		498,877
Less: Lapsed	59,966	
Accelerations	92,367	152,333
Issued to Date		346,544

Wells, Rich, Greene, Inc. / 767 Fifth Avenue / New York, N.Y. 10022 / Plaza 8-4300

April 16, 1974

Arnold M. Grant, Esq.
Compensation Committee Chairman
477 Madison Avenue
New York, New York 10021

Dear Mr. Grant:

Mrs. Lawrence has asked me to forward to you and to the members of your Committee for consideration by the Committee, management's recommendations for the following award of a stock option grant:

Name	Descriptive Title	Employment History Began	Salary	Stock Options Requested
Dick Jackson	Executive Vice President-Creative Director of Gardner Advertising Company, Incorporated	4-8-74	$65,000	4,000

At the time Mr. Jackson joined the Company, it was agreed that this recommendation would be made.

It is requested that any options granted be in accordance with the terms of the Stock Option Plan, as amended and contain the following provisions:

1. That they be qualified options.

2. That one third of the options granted may be exercised after six months from the date granted, one third eighteen months from the date granted and one third thirty months from the date granted.

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4. That the option price be 100% of the fair market value on the date on which the option is granted.

April 16, 1974

For your further information, I am enclosing herewith a current summary of the Stock Options.

If the recommendation is acceptable to you, will you kindly indicate your approval by signing the letter in the space provided. Please return a signed copy of this letter to me at your earliest convenience.

Very truly yours,

Frederick L. Jacobs
Secretary

enc.

cc: Mr. Troy Post
Mr. Emilio Pucci

Options and Terms Approved:

WELLS, RICH, GREENE, INC.

SUMMARY OF STOCK OPTION PLAN

April 18, 1974

AMOUNT APPROVED BY STOCKHOLDERS	
AUGUST 1968	50,000
MAY 1969	35,000
MARCH 1971	250,000
MARCH 1972	28,750
TOTAL AVAILABLE	363,750
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BALANCE AVAILABLE	17,206

SUMMARY

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TOTAL		363,750
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Issued to Date		346,544

Wells, Rich, Greene, Inc. / 767 Fifth Avenue / New York, N.Y. 10022 / Plaza 8-4300

April 16, 1974

Arnold M. Grant, Esq.
Compensation Committee Chairman
477 Madison Avenue
New York, New York 10021

Dear Mr. Grant:

Mrs. Lawrence has asked me to forward to you and to the members of your Committee for consideration by the Committee, management's recommendations for the following award of a stock option grant:

Name	Descriptive Title	Employment History Began	Salary	Stock Option Requested
Dick Jackson	Executive Vice President-Creative Director of Gardner Advertising Company, Incorporated	4-8-74	$65,000	4,000

At the time Mr. Jackson joined the Company, it was agreed that this recommendation would be made.

It is requested that any options granted be in accordance with the terms of the Stock Option Plan, as amended and contain the following provisions:

1. That they be qualified options.

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4. That the option price be 100% of the fair market value on the date on which the option is granted.

For your further information, I am enclosing herewith a current summary of the Stock Options.

If the recommendation is acceptable to you, will you kindly indicate your approval by signing the letter in the space provided. Please return a signed copy of this letter to me at your earliest convenience.

Very truly yours,

Frederick L. Jacobs
Secretary

enc.

cc: Mr. Troy Post
Mr. Emilio Pucci

Options and Terms Approved:

WELLS, RICH, GREENE, INC.

SUMMARY OF STOCK OPTION PLAN

April 18, 1974

AMOUNT APPROVED BY STOCKHOLDERS	
AUGUST 1968	50,000
MAY 1969	35,000
MARCH 1971	250,000
MARCH 1972	28,750
TOTAL AVAILABLE	363,750
ISSUED TO DATE	346,544
BALANCE AVAILABLE	17,206

SUMMARY

Options Exercised to Date		25,785
Stock Subject to Option		320,759
Balance Available for Option		17,206
TOTAL		363,750
Total Issued		498,877
Less: Lapsed	59,966	
Accelerations	92,367	152,333
Issued to Date		346,544

PLAINTIFF'S EXHIBIT 34

Two Letters Dated February 12, 1974, Signed "Options and Terms Approved" by Arnold M. Grant and Troy V. Post

PLAINTIFF Exhibit 34 DP March 4, 1974

Wells, Rich, Greene, Inc. / 767 Fifth Avenue / New York, N.Y. 10022 / Plaza 8-4300

February 12, 1974

Arnold M. Grant, Esq.
Compensation Committee, Chairman
477 Madison Avenue
New York, New York 10021

Dear Mr. Grant:

Mrs. Lawrence has asked me to forward to you and the members of your Committee, for consideration by the Committee, management's recommendation for an award of a stock option grant to Richard T. O'Reilly, Executive Vice President, to purchase 10,000 shares of the Corporation's Common Stock.

Mr. O'Reilly was previously awarded the following stock option grants pursuant to the Stock Option Plan:

Date of Grant	# of Shares	Purchase Price	Type of Option	Expiration Date
2/12/69	10,000	$15.00	Qualified	2/11/74*
5/10/71	7,500	20.50	Tandem	5/9/76, 5/9/
8/21/72	5,000	22.75	Tandem	8/20/77, 8/2

*Lapsed on February 11, 1974

It is requested that any option granted be in accordance with the terms of the Stock Option Plan, as amended, and contain the following provisions:

1. That it be a qualified option.

2. That the option price be 100% of the fair market value on the date on which the option is granted.

3. That one third of the option granted may be exercised after six months from the date granted, one third eighteen months from the date granted and one third thirty months from the date granted.

4. That the rights to exercise a qualified option shall expire not later than five years from the date on which the option is granted.

5. That, since the option is for more than 5,000 shares, when exercised it may be paid for in installments subject to appropriate governmental regulations with regard to such installments and that interest on any unpaid installments shall be at the rate of 4% per annum.

For your further information, I am enclosing herewith a current summary of the Stock Options.

If the recommendation is acceptable to you, will you kindly indicate your approval by signing the letter in the space provided. Please return a signed copy of this letter to me at your earliest convenience.

Very truly yours,

Frederick L. Jacobs
Secretary

enc.

cc: Mr. Troy V. Post
Mr. Emilio Pucci

Options and Terms Approved:

WALLS, RICE, GREENE, INC.

SUMMARY OF STOCK OPTIONS AND INCENTIVE STOCK PURCHASES

February 12, 1974

STOCK OPTIONS

AMOUNT APPROVED BY STOCKHOLDERS	
AUGUST 1968	50,000
MAY 1969	35,000
MARCH 1971	250,000
MARCH 1971	28,750
TOTAL AVAILABLE	363,750 *
ISSUED TO DATE	336,544
BALANCE AVAILABLE	27,206 **

SUMMARY

Options Exercised to Date		25,785
Stock Subject to Option ***		310,759
Balance Available for Option		27,206
TOTAL		363,750
Total Issued***		498,877
Less: Lapsed	69,966	
Accelerations	92,367	162,333
Issued to Date		336,544

* The term of the Incentive Stock Purchase Plan expired in August 1973.

** Total Shares Available for Grant prior to June 20, 1973 — 4,596
Shares accelerated-June 13, 1973 — 92,367
Shares granted June 20, 1973 subject to stockholder approval at next annual meeting — 81,202 — 11,165
Lapsed - August 31, 1973 to February 11, 1974 — 13,445
Sub-Total — 29,206
Loss: New Grants October 17, 1973 — 2,000
Total Available for Grant — 27,206

***Includes 81,202 shares granted subject to Stockholders' approval.

627a

MEMORANDUM

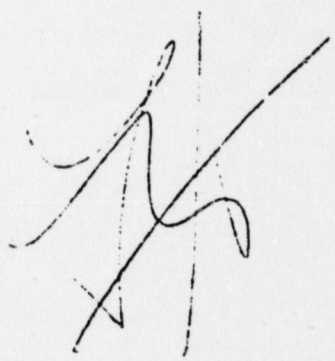
March 5, 1974

To: Stanley Haspel

From: Frederick L. Jacobs

Subject: Stock Option Grant

Attached is an approval of the Stock Option Grant to Richard T. O'Reilly for 10,000 shares executed by Arnold Grant. Mr. Grant delivered his approval to me at his office yesterday afternoon. Please send Mr. Grant a copy of the approval by Troy Post so that his records will be complete on this matter.



Wills, Rich, Greene, Inc. / 767 Fifth Avenue / New York, N.Y. 10022 / Plaza 8-4500

February 12, 1974

Arnold M. Grant, Esq.
Compensation Committee, Chairman
477 Madison Avenue
New York, New York 10021

Dear Mr. Grant:

Mrs. Lawrence has asked me to forward to you and the members of your Committee, for consideration by the Committee, management's recommendation for an award of a stock option grant to Richard T. O'Reilly, Executive Vice President, to purchase 10,000 shares of the Corporation's Common Stock.

Mr. O'Reilly was previously awarded the following stock option grants pursuant to the Stock Option Plan:

Date of Grant	# of Shares	Purchase Price	Type of Option	Expiration Date
2/12/69	10,000	$15.00	Qualified	2/11/74*
5/10/71	7,500	20.50	Tandem	5/9/76, 5/9
8/21/72	5,000	22.75	Tandem	8/20/77, 8/

*Lapsed on February 11, 1974

It is requested that any option granted be in accordance with the terms of the Stock Option Plan, as amended, and contain the following provisions:

1. That it be a qualified option.

2. That the option price be 100% of the fair market value on the date on which the option is granted.

3. That one third of the option granted may be exercised after six months from the date granted, one third eighteen months from the date granted and one third thirty months from the date granted.

OPTION GRANTS

JUNE 18, 1973

Name	Descriptive Title	Date of Grant	Option Price	Incentive Stock Purchase Plan @ (40%) # Shares	Stock Option Plan # Shares	Remaining	Starting	Employ

4. That the rights to exercise a qualified option shall expire not later than five years from the date on which the option is granted.

5. That, since the option is for more than 5,000 shares, when exercised it may be paid for in installments subject to appropriate governmental regulations with regard to such installments and that interest on any unpaid installments shall be at the rate of 4% per annum.

For your further information, I am enclosing herewith a current summary of the Stock Options.

If the recommendation is acceptable to you, will you kindly indicate your approval by signing the letter in the space provided. Please return a signed copy of this letter to me at your earliest convenience.

Very truly yours,

Frederick L. Jacobs
Secretary

enc.

cc: Mr. Troy V. Post
Mr. Emilio Pucci

Options and Terms Approved:

_____

PLAINTIFF'S EXHIBIT 35

Two Letters Dated October 16, 1973, Signed "Options and Terms Approved" by Arnold M. Grant and Troy V. Post

PLAINTIFF Exhibit 35 ~~D~~ Oct 17, 1973

Wells, Rich, Greene Inc / 767 Fifth Avenue / New York, N.Y. 10022 / Plaza 8-4300

October 16, 1973

Arnold M. Grant, Esq.
Compensation Committee Chairman
477 Madison Avenue
New York, New York 10021

Dear Mr. Grant:

Mrs. Lawrence has asked me to forward to you and to the members of your Committee for consideration by the Committee, management's recommendations for the following awards of stock option grants:

Name	Descriptive Title	Employment History Began	Salary	Stock Options Requested
Tom Heck	Art Director	10-1-73	$75,000.	1,000
Robert Kuperman	Art Director	9-17-73	75,000.	1,000

At the time Messrs. Heck and Kuperman joined the Company, it was agreed that these recommendations would be made.

It is requested that any options granted be in accordance with the terms of the Stock Option Plan, as amended and contain the following provisions:

1. That they be non-qualified options.

2. That one third of the options granted may be exercised after six months from the date granted, one third eighteen months from the date granted and one third thirty months from the date granted.

3. That the rights to exercise non-qualified options shall expire not later than ten years from the date on which the option is granted.

4. That the option price be 100% of the fair market value on the date on which the option is granted.

For your further information, I am enclosing herewith a current summary of the Stock Options.

Arnold M. Grant, Esq. October 16, 1973

If the recommendations are acceptable to you, will you kindly indicate your approval by signing the letter in the space provided. Please return a signed copy of this letter to me at your earliest convenience.

Very truly yours,

Frederick L. Jacobs
Secretary

enc.

cc: Mr. Troy V. Post
Mr. Emilio Pucci

Options and Terms Approved:

WELLS, RICH, GREENE, INC.

SUMMARY OF STOCK OPTIONS AND INCENTIVE STOCK PURCHASES

September 30, 1973

	STOCK OPTIONS	INCENTIVE STOCK PURCHASE*
AMOUNT APPROVED BY STOCKHOLDERS		
AUGUST 1968	50,000	50,000
MAY 1969	35,000	35,000
MARCH 1971	250,000	--
MARCH 1971	28,750	--
TOTAL AVAILABLE	363,750	85,000
ISSUED TO DATE	347,919	85,000
BALANCE AVAILABLE	15,831 **	-0-

SUMMARY

Options Exercised to Date		25,485
Stock Subject to Option ***		322,434
Balance Available for Option		15,831
TOTAL		363,750
Total Issued***		496,877
Less: Lapsed	56,591	
Accelerations	92,367	148,958
Issued to Date		347,919

* The term of the Incentive Stock Purchase Plan expired in August 1973.

** Total Shares Available for Grant prior to June 20, 1973		4,596
Shares accelerated-June 13, 1973	92,367	
Shares granted June 20, 1973 subject to stockholder approval at next annual meeting	81,202	11,165
Lapsed - August 31, 1973		70
Total Available for Grant		15,831

***Includes 81,202 shares granted subject to Stockholders' approval.

Wells, Rich, Greene Inc / 767 Fifth Aven. / New York, N.Y. 10022 / Plaza 8-4300

October 16, 1973

Arnold M. Grant, Esq.
Compensation Committee Chairman
477 Madison Avenue
New York, New York 10021

Dear Mr. Grant:

Mrs. Lawrence has asked me to forward to you and to the members of your Committee for consideration by the Committee, management's recommendations for the following awards of stock option grants:

Name	Descriptive Title	Employment History Began	Salary	Stock Options Requested
Tom Heck	Art Director	10-1-73	$75,000.	1,000
Robert Kuperman	Art Director	9-17-73	75,000.	1,000

At the time Messrs. Heck and Kuperman joined the Company, it was agreed that these recommendations would be made.

It is requested that any options granted be in accordance with the terms of the Stock Option Plan, as amended and contain the following provisions:

1. That they be non-qualified options.

2. That one third of the options granted may be exercised after six months from the date granted, one third eighteen months from the date granted and one third thirty months from the date granted.

3. That the rights to exercise non-qualified options shall expire not later than ten years from the date on which the option is granted.

4. That the option price be 100% of the fair market value on the date on which the option is granted.

For your further information, I am enclosing herewith a current summary of the Stock Options.

Arnold M. Grant, Esq. October 16, 1973

If the recommendations are acceptable to you, will you kindly indicate your approval by signing the letter in the space provided. Please return a signed copy of this letter to me at your earliest convenience.

Very truly yours,

Frederick L. Jacobs
Secretary

enc.

cc: Mr. Troy V. Post
Mr. Emilio Pucci

Options and Terms Approved:

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WELLS, RICH, GREENE, INC.

SUMMARY OF STOCK OPTIONS AND INCENTIVE STOCK PURCHASES

September 30, 1973

AMOUNT APPROVED BY STOCKHOLDERS	STOCK OPTIONS	INCENTIVE STOCK PURCHASE*
AUGUST 1968	50,000	50,000
MAY 1969	35,000	35,000
MARCH 1971	250,000	--
MARCH 1971	28,750	--
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ISSUED TO DATE	347,919	85,000
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***Includes 81,202 shares granted subject to Stockholders' approval.

PLAINTIFF'S EXHIBIT 36

Letter Dated July 19, 1973, from Frederick L. Jacobs, with attachments

PLAINTIFF Exhibit 36 Ep

June 20, 1973

Wills, Rich, Greene, Inc / 767 Fifth Avenue / New York, N.Y. 10022 / Plaza 8-4300

June 19, 1973

Arnold M. Grant, Esq.
Compensation Committee, Chairman
477 Madison Avenue
New York, New York 10021

Dear Mr. Grant:

A large group of stock optionees holding stock options granted pursuant to the Stock Option Plan at prices significantly higher than the current market price of the Company's stock have asked the Board of Directors to accelerate the expiration dates of such options. I am enclosing herewith a list indicating the names and number of shares requested by each to be accelerated and a form copy of the letter requesting acceleration submitted by each such stock optionee.

At the meeting of the Board of Directors to be held on June 20, 1973, management intends to recommend that such acceleration requests be accepted since the incentive effect of such stock options has been substantially diminished.

In the event the Board of Directors approved management's recommendation to accept the requests for acceleration, Mrs. Lawrence has asked me to forward to you and to the members of your Committee, for consideration by the Committee, management's recommendations for awards of stock option grants as set forth in the attached schedule.

It is requested that any options granted be in accordance with the terms of the Stock Option Plan, as amended and contain the following provisions:

1) That they be made subject to approval of the stockholders at the next annual meeting.

2) That they be non-qualified options, except where otherwise indicated.

3) That one third of the options granted may be exercised after six months from the date granted, one third eighteen months from the date granted and one third thirty months from the date granted.

4) That the rights to exercise non-qualified options shall expire not later than ten years and qualified options not later than five years from the date on which the option is granted.

5) That the option price be 100% of the fair market value on the date on which the option is granted.

6) That options of 5,000 shares or more, when exercised, may be paid for in installments subject to appropriate governmental regulations with regard to such installments and that the interest on any unpaid installments shall be at the rate of 4% per annum.

For your further information, I am enclosing herewith a summary of the stock options prior to acceleration requests, and a summary of the stock options assuming acceptance by the Board of the acceleration requests.

Management has consulted with Hughes Hubbard & Reed in the establishment and implementation of the foregoing procedures herein to assure that all legal requirements with regard to the acceleration requests and the issuance of any new grants of stock options have been satisfied.

If the recommendations are acceptable to you, will you kindly indicate your approval by signing both this letter and the schedule of management's recommendations in the space provided. Please return the same to me at your earliest convenience.

Also enclosed is a Schedule of Officers' Salaries (non-contractual).

If you have any questions about any of the foregoing, please do not hesitate to call me.

Very truly yours,

Frederick L. Jacobs
Secretary

enc.

cc: Mr. Troy V. Post
Mr. Emilio Pucci

Options and Terms Approved:

Schedule of Employees Requesting Acceleration of Stock Option Expiration Dates

Name	Number of Shares Surrendered
Abarquez, J.	250
Altman, H.	500
Baity, J.	300
Banner, M.	367
Burns, J.	10,000
Caulfield, A.	1,500
Challis, D.	1,000
D'Amato, G.	3,000
Dragoti, S.	11,400
Durham, K.	500
End, J.	3,500
Freedman, R.	1,750
Frey, J.	500
Gibson, C.	500
Goldsmith, I.	500
Green, H.	3,000
Hamm, C.	2,500
Haspel, S.	250
Hughes, J.	650
Hysen, M.	1,500
Igiel, B.	400
Jacobs, M.	500
Jewett, E.	200
Kessler, G.	2,500
Loughrane, T.	7,500
Mahler, M.	1,000
Mansfield, M.	1,000
McHugh, B.	3,600
Meyer, E.	250
Minicucci, V.	250
Mitchell, M.	900
Moran, F.	75
Neufeld, B.	3,000
Olesky, B.	1,000
Ranson, J.	1,500
Resnick, D.	3,000
Roberts, G.	250
Singer, H.	1,500
Stern, M.	7,500
Truffelman, J.	25
Tsao, A.	1,000
Van Stom, A.	750
Wechsler, L.	2,000
Weinrib, A.	750
Wiethaupt, W.	750
Wolf, R.	300
Wolfe, C. A.	6,900
Zucker, H.	500
Total	92,367

Name	Descriptive Title
Burns, T.	Sr. Vice President Account Services
McHugh, P.	Director of Communication Services
Stern, M.	Sr. Vice President Sales Director

The options set forth on this sch
of 10 typewritten pages are appr

RECOMMENDATIONS FOR STOCK OPTION GRANTS

JUNE 18, 1973

	Date of Grant	Option Price	Incentive Stock Purchase Plan @ (40%) # Shares	Stock Option Plan # Shares	Remaining Unexercised	Starting Date	Employment History Salary	Raises Date	Raises Amount	Current Salary	Stock Options Requested
nt						7/67	55,000	8/69	7,500		8,335
								11/71	12,500		
								12/72	15,000	90,000	
	5/73	12.00	400 ($7.66)			4/73	75,000			75,000	3,600
t	9/70	8.375		7500	2500	1/68	42,500	5/69	3,500		
								4/70	4,000		
								12/71	20,000	70,000	6,275

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JUNE 18, 1973

Name	Descriptive Title	Date of Grant	Option Price	Incentive Stock Purchase Plan @ (40%) # Shares	Stock Option Plan # Shares	Remaining Unexercised	Starting Date	Employment History Salary	Raises Date	Raises Amount	Current Salary	Stock Options Requested
ltman, H.	Copywriter						11/68	23,000	8/69	2,000		
										1,375		
ox, B.	Art Director									5,000	31,375	450
'Amato, G.	Vice President						11/72	45,000			45,000	1,000
							6/66	35,000	6/67	5,000		2,550
									9/68	10,000		
ragoti, S.	President WRG/Dragoti Ltd.			3,600					11/69	10,000	60,000	
							7/67	41,500	1/68	8,500		
									12/68	10,000		
d, J.	Vice President	9/70	8.375		900	600			9/69	10,000	70,000	9,600*
							3/69	20,000	10/69	2,500		
									4/70	3,500		
									11/70	4,000		
									1/72	7,000		
ey, J.	Vice President	9/70	8.375		600	300			1/73	10,000	47,000	2,975
							11/67	21,000	10/68	4,000		
									7/69	3,000		
									11/70	3,000		
									1/72	3,000		
									1/73	6,000	40,000	450

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*Qualified

JUNE 18, 1973

Name	Descriptive Title	Date of Grant	Option Price	Incentive Stock Purchase Plan @ (40%) # Shares	Stock Option Plan # Shares	Remaining Unexercised	Employment History Starting Date	Salary	Raises Date	Raises Amount	Current Salary	Stock Options Requested
ibson, C.	Vice President						6/67	35,000	11/68	5,000		
									1/70	5,000		
									1/72	2,475		
									1/73	2,600	50,075	450
reen, H.	Vice President						6/66	35,000	8/67	5,000		
									9/68	10,000		
									11/69	10,000	60,000	2,550
cobs, M.	Vice President						6/67	35,000	11/68	5,000		
									1/70	5,000		
									1/72	2,475		
									1/73	2,600	50,075	450
ahler, M	Vice President	9/70	8.375		900	300	3/70	40,000	1/72	5,000		
									1/73	5,000	50,000	850
oran, F.	Production Manager						7/67	13,000	7/68	1,300		
									7/69	1,300		
									12/71	858		
urphy, P.	Copywriter								1/73	905	17,363	70
eufeld, B.	Vice President	6/69	14.00		1500	0	2/73	40,000			40,000	1,000
	Copywriter	6/70	8.375		300	0	12/68	35,000	3/69	5,000		
	Ex.V.P./Gardner and Director of Creative Services								11/70	3,000		
									1/72	5,000		
									10/72	12,000	60,000	2,550

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JUNE 18, 1973

Name	Descriptive Title	Date of Grant	Option Price	Incentive Stock Purchase Plan @ (40%) # Shares	Stock Option Plan # Shares	Remaining Unexercised	Starting Date	Employment History Salary	Raises Date	Raises Amount	Current Salary	Stock Options Requested
Blesky, B.	Vice President						6/69	22,000	6/70	5,000		
									12/71	5,000		
									1/73	5,000	37,000	850
Ranson, J.	Vice President	9/70	8.37[illegible]		900	900	2/69	30,000	1/70	5,000		
									11/70	3,000		
									12/71	5,000		
									12/72	7,000	50,000	1,275
Resnick, D.	Copywriter						3/69	35,000	1/71	3,500		
									4/71	6,500	45,000	2,550
Singer, H.	Vice President						6/66	15,000	1/67	3,000		
									11/67	7,000		
									9/68	5,000		
									9/69	5,100		
									11/70	3,000		
									12/71	2,095		
									1/73	2,210	42,406	1,275
Truffelman, J.	Production Manager						11/66	7,200	5/67	500		
									11/67	1,920		
									11/68	2,600		
									5/69	2,600		
									4/70	1,040		
									12/71	872		
									1/73	920	17,652	25
Tsao, A.	Vice President	1/70	13.00		1000	1000	4/69	50,000			50,000	850

STARTING

JUNE 18, 1973

Name	Descriptive Title	Date of Grant	Option Price	Incentive Stock Purchase Plan @ (40%) # Shares	Stock Option Plan # Shares	Remaining Unexercised	Starting Date	Employment History Salary	Raises Date	Raises Amount	Current Salary	Stock Options Requested
aity, J.	Vice President						1/71	30,000			30,000	270
Caulfield, A.	Wells, Rich, Greene, Ltd. (London) Managing Director						11/68	22,000	1/70	5,000		
									8/72	6,000	33,000	1,275
hallis, D.	Vice President						11/70	23,000	1/72	3,500		
									3/72	2,000		
									2/73	5,000	33,500	850
Hamm, C.	Vice President	6/69	14.00	700	725	0	6/67	30,000	2/69	4,000		
		8/70	6.00		1000	334			2/70	4,000		
		5/71	20.125	1250					1/72	4,000		
									2/73	8,000	50,000	2,275
Jewett, E.	Vice President						7/69	25,000	1/72	2,500		
									2/73	2,500	30,000	180
Loughrane, P.	Executive VP Gardner						1/73	80,000			80,000	6,275
Mansfield, M.	Vice President						12/69	28,000	1/72	4,000		
									2/73	4,000	36,000	850
Meyer, E.	Account Executive						9/70	26,000	12/71	1,430		
									1/73	2,000	29,430	225

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JUNE 18, 1973

Name	Descriptive Title	Date of Grant	Option Price	Incentive Stock Purchase Plan @ (40%) # Shares	Stock Option Plan # Shares	Remaining Unexercised	Employment History Starting Date	Salary	Raises Date	Raises Amount	Current Salary	Stock Options Requeste
Minicucci, V.	Account Executive						10/68	16,000	9/69	2,000		
									1/70	2,500		
									1/71	2,000		
									5/72	1,000		
									5/73	1,500	25,000	225
Mitchell, M.	Vice President	6/69	14.00	300	400	0	9/68	24,000	10/69	2,500		
		9/70	8.375		500	167			11/70	3,000		
									1/72	3,000		
									2/73	3,500	36,000	810
Roberts, C.	Vice President	9/70	8.375		500	167	1/70	25,000	12/70	3,000		
									1/72	2,500		
									2/73	3,000	33,500	225
Van Stom, A.	Vice President						11/68	20,000	1/70	2,500		
									11/72	17,500	40,000	675
Weinrib, A.	Vice President	6/70	6.00		500	500	11/69	34,000	12/71	1,870		
									2/73	2,500	38,370	675
Wiethaupt, W.	Account Executive						1/73	42,500			42,500	675

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[illegible] STOCK OPTION GRANTS

JUNE 18, 1973

Name	Descriptive Title	Date of Grant	Option Price	Incentive Stock Purchase Plan @ (40%) # Shares	Stock Option Plan # Shares	Remaining Unexercised	Employment History					Stock Options Requested
							Starting Date	Salary	Raises Date	Raises Amount	Current Salary	
Wolfe, C. A.	Vice President						9/66	28,000	2/67	3,500		
									10/68	3,000		
									1/70	4,500		
									1/72	6,000		
									2/73	5,000	50,000	5,800
Wolf, R.	Vice President						1/71	23,000	1/72	2,500		
									2/73	3,500	29,000	270

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JUNE 18, 1973

Name	Descriptive Title	Date of Grant	Option Price	Incentive Stock Purchase Plan @ (10%) # Shares	Stock Option Plan # Shares	Remaining Unexercised	Starting Date	Employment History Salary	Raises Date	Raises Amount	Current Salary	Stock Options Requested
arquez, J.	Supervisor General Accounting						1/68	10,000	7/68	1,000		
									2/69	1,500		
									6/71	2,000		
									3/72	800		
									11/72	1,500	16,800	225
anner, M.	Staff Accountant						3/69	14,000	8/69	2,500		
									10/70	1,500	18,000	332
reedman, R.	Controller	5/71	20.125	750			1/68	12,000	1/68	1,000		
		6/69	14.00		750	0			5/68	2,500		
									2/69	5,000		
									8/69	2,000		
									2/70	2,500		
									2/72	2,500	27,500	1,490
oldsmith, I.	Supervisor Accounts Payable						4/67	8,320	9/67	780		
									1/68	900		
									5/68	1,000		
									2/69	1,000		
									11/69	1,000		
									11/70	1,500		
									12/71	797		
									1/73	1,353	16,650	450
essler, G.	Vice President						3/67	15,000	1/68	3,000		
									5/68	7,000		
									2/69	5,000		
									2/72	5,000	35,000	2,125

JUNE 18, 1973

Name	Descriptive Title	Date of Grant	Option Price	Incentive Stock Purchase Plan @ (40%) # Shares	Stock Option Plan # Shares	Remaining Unexercised	Employment History: Starting Date	Salary	Raises: Date	Raises: Amount	Current Salary	Stock Options Requested
Hughes, J.	Vice President	5/71	20.125	850			9/68	24,000	10/69	2,000		
		6/70	6.00		1500	1000			3/70	6,000		
									12/71	1,760		
									1/73	1,856	35,616	585
Hysen, M.	Vice President	10/68	17.50	5000			6/68	35,000	8/69	3,500		
									1/70	3,500		
									12/71	2,310		
									1/73	5,000	49,310	1,275
Igiel, R.	Vice President						9/67	11,500	4/68	3,500		
									4/69	2,000		
									6/70	2,000		
									8/70	1,000		
									1/72	3,500		
									1/73	2,500	26,000	360
Wechsler, L.	Vice President						1/67	25,000	7/67	5,000		
									11/68	5,000		
									1/70	4,000		
									12/71	2,145		
									1/73	5,355	46,500	1,700
Zucker, H.	Vice President	1/72	23.75	400			10/68	13,000	11/69	1,500		
									5/70	2,500		
									9/71	4,000		
									1/73	2,000	23,000	450

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JUNE 18, 1973

Name	Descriptive Title	Date of Grant	Option Price	Incentive Stock Purchase Plan @ (40%) # Shares	Stock Option Plan # Shares	Remaining Unexercised	Starting Date	Employment History Salary	Raises Date	Raises Amount	Current Salary	Stock Options Requested
Durham, K.	Vice President	9/70	8.375		400	400	6/67	6,760	10/67	520		
									7/68	1,560		
									8/68	1,160		
									3/69	5,000		
									1/70	10,000		
									1/72	5,000	30,000	450
Haspel, S.	Assistant	5/71	20.125	250			1/70	25,000	1/72	2,500		
	Secretary	9/70	8.375		500	167			3/73	3,000	30,500	225

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Summary of Shares Available For Grant

Amounts Previously Approved by Stockholders	363,750
Less: Issued To Date (Post Acceleration)	266,787
Balance Available for Grants	96,963
Grants Recommended Herein	81,202

NAME	TITLE	STARTING DATE	STARTING SALARY	CURRENT SALARY
Murray Hysen	Vice President	6/68	$35,000	$49,310
Robert Igiel	Vice President	9/67	11,500	26,000
Murray Jacobs	Vice President	6/67	35,000	50,075
Edward Jewett	Vice President	7/69	25,000	30,000
Gerald Kessler	Vice President	3/67	15,000	35,000
Maurice Mahler	Vice President	3/70	40,000	50,000
Matthew Mansfield	Vice President	12/69	28,000	36,000
Paul Margulies	Vice President	9/66	30,000	50,000
William McGivney	Vice President	5/66	22,000	50,000
Martin Mitchell	Vice President	9/68	24,000	36,000
Bert Neufeld	Vice President	12/68	35,000	60,000
David Ottey	Vice President	4/69	25,000	36,500
Gerald Ranson	Vice President	2/69	30,000	50,000
Gary Roberts	Vice President	1/70	25,000	33,500
Harold Singer	Vice President	6/66	15,000	42,406
Irving Sloan	Vice President	7/67	52,000	57,000
Alex Tsao	Vice President	4/69	50,000	50,000

NAME	TITLE	STARTING DATE	STARTING SALARY	CURRENT SALARY
John Burns	Senior Vice President	7/67	$55,000	$90,000
Martin Stern	Senior Vice President	1/68	42,500	70,000
John Baity	Vice President	1/71	30,000	30,000
Theodore Barash	Vice President	5/70	55,000	55,000
Donald Challis	Vice President	11/70	23,000	33,500
George D'Amato	Vice President	6/66	35,000	60,000
Katherine Durham	Vice President	6/67	6,760	30,000
Jacqueline End	Vice President	3/69	20,000	47,000
Richard Freedman	Vice President	9/67	12,000	27,500
Jeffrey Frey	Vice President	11/67	21,000	40,000
Catharine Gibson	Vice President	6/67	35,000	50,075
Herb Green	Vice President	6/66	35,000	60,000
Charles Hamm	Vice President	6/67	30,000	50,000
Stanley Haspel	Assistant Secretary	1/70	25,000	30,500
John Hughes	Vice President	9/68	24,000	35,616

NAME	TITLE	STARTING DATE	STARTING SALARY	CURRENT SALARY
Michael Ulick	Vice President	6/69	$40,000	$45,000
Andre Van Stom	Vice President	11/66	20,000	40,000
Lewis Wechsler	Vice President	1/67	25,000	46,500
Arnold Weinrib	Vice President	11/69	34,000	38,370
Robert Wolf	Vice President	1/71	23,000	29,000
C. A. Wolfe	Vice President	9/66	28,000	50,000
Hans Zucker	Vice President	10/68	13,000	23,000

PLAINTIFF'S EXHIBIT 37

Two Letters Dated May 24, 1973, Signed "Options and Terms Approved" by Arnold M. Grant and Troy V. Post

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PLAINTIFF Exhibit 37 KD

MAY 31, 1973

Wells, Rich, Greene Inc / 767 Fifth Avenue / New York, N.Y. 10022 / Plaza 8-4300

May 24, 1973

Arnold M. Grant, Esq.
Compensation Committee Chairman
477 Madison Avenue
New York, New York 10021

Dear Mr. Grant:

Mrs. Lawrence has asked me to forward to you and to the members of your Committee for consideration by the Committee, management's recommendations for the following awards of stock option grants and an incentive stock purchase grant:

H. Bart McHugh, Director-Communications Services

Shares Requested:	Stock Option	Incentive Stock Purchase
	3,600	400

Employment History:

Began employment:	April 30, 1973
Salary:	$75,000

At the time Mr. McHugh joined the Company, it was agreed that this recommendation would be made and that he would be nominated for election as a Senior Vice President at the next meeting of the Board of Directors.

Charles Hamm, Vice President - Group Head

Shares Requested:	Stock Option
	1,000

Employment History:

Began employment:		February, 1967
Salary:		$30,000
Raises:	2/69	4,000
	2/70	4,000
	1/72	4,000
	2/73	8,000
Current Salary:		$50,000

656a

Charles Hamm, Vice President - Group Head (cont.)

PRIOR OPTIONS OR INCENTIVE PURCHASES (IP)

Date	Amount	Price
6/69	700(IP)	$ 5.60
6/69	725	14.00
8/70	1,000	6.00
5/71	1,250(IP)	8.05
1/73	1,500	16.75

It is requested that any options granted be in accordance with the terms of the Stock Option Plan, as amended and contain the following provisions:

1. That they be qualified options.

2. That the option price be 100% of the fair market value on the date on which the option is granted.

3. That one third of the options granted may be exercised after six months from the date granted, one third eighteen months from the date granted and one third thirty months from the date granted.

4. That the rights to exercise qualified options shall expire not later than five years from the date on which the option is granted.

It is also requested that any grant of shares pursuant to the Incentive Stock Purchase Plan be exercisable within ninety days after the date of grant. As you know, this Plan requires that the purchase price for any such shares be the greater of (i) 40% of the fair market value on the day preceding the date of grant or (ii) the consolidated book value of such shares as of October 31, 1972. Accordingly, if granted, the purchase price will be $7.66 per share, which is the book value per share as of October 31, 1972 since at the present market value (approximately $11.00) the book value is the greater sum.

For your information, I am enclosing herewith a current summary of the Stock Options and Incentive Stock Purchases.

If the recommendations are acceptable to you, will you kindly indicate your approval by signing the letter in the space provided. Please return a signed copy of this letter to me at your earliest convenience.

Very truly yours,

Frederick L. Jacobs
Secretary

enc.

cc; Mr. Troy V. Post
Mr. Emilio Pucci

Options and Terms Approved:

_____

WELLS, RICH, GREENE, INC.

SUMMARY OF STOCK OPTIONS AND INCENTIVE STOCK PURCHASES

AS OF MAY 24, 1973

	STOCK OPTIONS	INCENTIVE STOCK PURCHASE
AMOUNT APPROVED BY STOCKHOLDERS		
AUGUST 1968	50,000	50,000
MAY 1969	35,000	35,000
MARCH 1971	250,000	--
MARCH 1972	28,750	--
TOTAL AVAILABLE	363,750	85,000
ISSUED TO DATE	356,821	84,600
BALANCE AVAILABLE	6,929	400

SUMMARY

Options Exercised to Date	25,285
Stock Subject to Option	331,536
Balance Available for Option	6,929
TOTAL	363,750
Total Issued	411,075
Less: Total Lapsed	54,254
Issued To Date	356,821

Wells, Rich, Greene Inc. / 767 Fifth Avenue / New York, N.Y. 10022 / Plaza 8-11300

May 24, 1973

Arnold M. Grant, Esq.
Compensation Committee Chairman
477 Madison Avenue
New York, New York 10021

RECEIVED
ACCOUNTING DEPT.
JUN 1 1973
WELLS RICH GREENE INC.

Dear Mr. Grant:

Mrs. Lawrence has asked me to forward to you and to the members of your Committee for consideration by the Committee, management's recommendations for the following awards of stock option grants and an incentive stock purchase grant:

H. Bart McHugh, Director-Communications, Services

Shares Requested:	Stock Option	Incentive Stock Purchase
	3,600	400

Employment History:

Began employment:	April 30, 1973
Salary:	$75,000

At the time Mr. McHugh joined the Company, it was agreed that this recommendation would be made and that he would be nominated for election as a Senior Vice President at the next meeting of the Board of Directors.

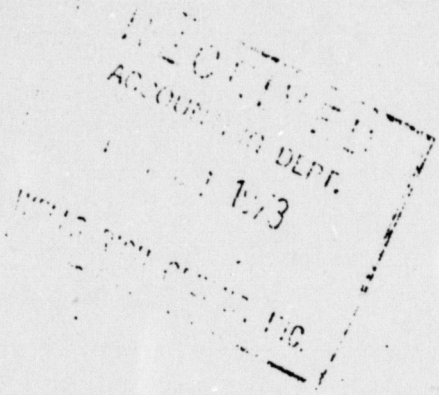
Charles Hamm, Vice President - Group Head

Shares Requested:	Stock Option
	1,000

Employment History:

Began employment:		February, 1967
Salary:		$30,000
Raises:	2/69	4,000
	2/70	4,000
	1/72	4,000
	2/73	8,000
Current Salary:		$50,000

Charles Hamm, Vice President - Group Head (cont.)



PRIOR OPTIONS OR INCENTIVE PURCHASES (IP)

Date	Amount	Price
6/69	700(IP)	$ 5.60
6/69	725	14.00
8/70	1,000	6.00
5/71	1,250(IP)	8.05
1/73	1,500	16.75

It is requested that any options granted be in accordance with the terms of the Stock Option Plan, as amended and contain the following provisions:

1. That they be qualified options.

2. That the option price be 100% of the fair market value on the date on which the option is granted.

3. That one third of the options granted may be exercised after six months from the date granted, one third eighteen months from the date granted and one third thirty months from the date granted.

4. That the rights to exercise qualified options shall expire not later than five years from the date on which the option is granted.

It is also requested that any grant of shares pursuant to the Incentive Stock Purchase Plan be exercisable within ninety days after the date of grant. As you know, this Plan requires that the purchase price for any such shares be the greater of (i) 40% of the fair market value on the day preceding the date of grant or (ii) the consolidated book value of such shares as of October 31, 1972. Accordingly, if granted, the purchase price will be $7.66 per share, which is the book value per share as of October 31, 1972 since at the present market value (approximately $11.00) the book value is the greater sum.

For your information, I am enclosing herewith a current summary of the Stock Options and Incentive Stock Purchases.

If the recommendations are acceptable to you, will you kindly indicate your approval by signing the letter in the space provided. Please return a signed copy of this letter to me at your earliest convenience.

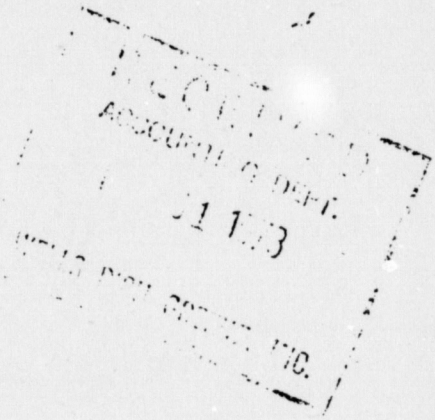
Very truly yours,

Frederick L. Jacobs
Secretary

enc.

cc; Mr. Troy V. Post
Mr. Emilio Pucci

Options and Terms Approved:



WELLS, RICH, GREEN, INC.

SUMMARY OF STOCK OPTIONS AND INCENTIVE STOCK PURCHASES

AS OF APRIL 30, 1973

	STOCK OPTIONS	INCENTIVE STOCK PURCHASE
AMOUNT APPROVED BY STOCKHOLDERS		
AUGUST 1968	50,000	50,000
MAY 1969	35,000	35,000
MARCH 1971	250,000	--
MARCH 1972	28,750	--
TOTAL AVAILABLE	363,750	85,000
ISSUED TO DATE	356,821	84,600
BALANCE AVAILABLE	6,929	400

SUMMARY

Options Exercised to Date	25,285
Stock Subject to Option	331,536
Balance Available for Option	6,929
TOTAL	363,750
Total Issued	411,075
Less: Total Lapsed	54,254
Issued To Date	356,821

PLAINTIFF'S EXHIBIT 38

Two Identical Letters Dated January 24, 1973, Signed by Arnold M. Grant and Emilio Pucci

PLAINTIFF Exhibit 38 RD JAN. 26, 1973

Wells, Rich, Greene, Inc. / 767 Fifth Avenue / New York, N.Y. 10022 / Plaza 8-4300

January 24, 1973

Arnold M. Grant, Esq.
Compensation Committee Chairman
477 Madison Avenue
New York, New York 10021

Dear Mr. Grant:

Mrs. Lawrence has asked me to forward to you and to the members of your Committee for consideration by the Committee, management's recommendations for awards of stock option grants as set forth in the attached schedule.

It is requested that any options granted be in accordance with the terms of the Stock Option Plan, as amended and contain the following provisions:

1. That they be qualified options.

2. That the option price be 100% of the fair market value on the date on which the option is granted.

3. That one third of the options granted may be exercised after six months from the date granted, one third eighteen months from the date granted and one third thirty months from the date granted

4. That the rights to exercise qualified options shall expire not later than five years from the date on which the option is granted.

.../...

If the recommendations are acceptable to you, will you kindly indicate your approval by signing both the letter and the attached schedule in the spaces provided. Please return one set of these papers to me at your earliest convenience.

Very truly yours,

Frederick L. Jacobs
Secretary

enc.

cc: Mr. Troy V. Post
Mr. Emilio Pucci

Options and Terms Approved

_____

John V. Burns	Senior V.P.-Account Services	2,500	7/67	$55,000	8/69	$ 7,500				
					11/71	12,500	$75,000		5/71	$7,50
Creative										
Bert Neufeld*	Vice President-Copywriter (Wells, Rich, Greene, Inc.) Executive Vice President and Director of Creative Services (Gardner Advertising Company, Incorporated)	3,000	12/68	35,000	3/69	5,000			6/69	1,00
					11/70	3,000			6/69	1,50
					1/72	5,000			9/70	90
					8/72	12,000	60,000		5/71	50
Account Services										
Donald Challis	Vice President-Account Supervisor	500	11/70	23,000	1/72	3,500			5/71	50
					3/72	2,000				
					2/73	5,000	33,500			
Charles Fryer	Vice President-Group Head	750	9/72	50,000			50,000			
Charles Hamm	Vice President-Group Head	1,500	2/67	30,000	2/69	4,000			6/69	70
					2/70	4,000			6/69	72
					1/72	4,000			8/70	1,00
					2/73	5,000			5/71	1,25
Barry Loughrane	Executive V.P. and Managing Director of Gardner Advertising Company Incorporated	7,500	1/73	80,000			80,000			
Matthew Mansfeld	Vice President-Account Supervisor	250	12/69	28,000	1/72	4,000				
					2/73	4,000	36,000		5/71	75
Gary Roberts	Vice President-Account Supervisor	250	1/70	25,000	12/70	3,000				
					1/72	2,500				
					2/73	3,000	33,500		9/70	50
Andre van Stom	Vice President-Account Supervisor	750	11/68	20,000	1/70	2,500				
					11/72	17,500	40,000			
Warren Wiethaupt	Group Head	750	1/73	42,500						

*Mr. Neufeld left the Company in July, 1972 and was rehired in October, 1972. As a result of his voluntary termination 1,100 shares granted pursuant to the Stock Option Plan and 400 shares granted pursuant to the Incentive Stock Purchase Plan lapsed and were reacquired, respectively.

Wells, Rich, Greene Inc / 767 Fifth Avenue / New York, N.Y. 10022 / Plaza 8-4300

January 24, 1973

Arnold M. Grant, Esq.
Compensation Committee Chairman
477 Madison Avenue
New York, New York 10021

Dear Mr. Grant:

Mrs. Lawrence has asked me to forward to you and to the members of your Committee for consideration by the Committee, management's recommendations for awards of stock option grants as set forth in the attached schedule.

It is requested that any options granted be in accordance with the terms of the Stock Option Plan, as amended and contain the following provisions:

1. That they be qualified options.

2. That the option price be 100% of the fair market value on the date on which the option is granted.

3. That one third of the options granted may be exercised after six months from the date granted, one third eighteen months from the date granted and one third thirty months from the date granted

4. That the rights to exercise qualified options shall expire not later than five years from the date on which the option is granted.

.../...

Arnold M. Grant, Esq.
January
Page 2.

If the recommendations are acceptable to you, will you kindly indicate your approval by signing both the letter and the attached schedule in the spaces provided. Please return one set of these papers to me at your earliest convenience.

Very truly yours,

Frederick L. Jacobs
Secretary

enc.

cc: Mr. Troy V. Post
Mr. Emilio Pucci

Options and Terms Approved

Emilio Pucci

John V. Burns	Sen
Creative	
Bert Neufeld*	Vic (We Exe Dir (Ca In
Account Services	
Donald Challis	Vic
Charles Fryer	Vic
Charles Hamm	Vic
Barry Loughrane	Exe of Inc
Matthew Mansfeld	Vic
Gary Roberts	Vic
Andre van Stom	Vic
Warren Wiethaupt	Cr

*Mr. Neufeld left the Company
As a result of his voluntary
the Stock Option Plan and 4
Stock Purchase Plan lapsed

ior V.P.-Account Services	2,500	7/67	$55,000	8/69	$ 7,500				
				11/71	12,500	$75,000	5/71	$7,500	$20.50
e President-Copywriter	3,000	12/68	35,000	3/69	5,000		6/69	1,000(IP)	5.60
lls, Rich, Greene, Inc.)				11/70	3,000		6/69	1,500	14.00
cutive Vice President and				1/72	5,000		9/70	900	8.375
ector of Creative Services				8/72	12,000	60,000	5/71	500	20.50
rdner Advertising Company,									
corporated)									
e President-Account Supervisor	500	11/70	23,000	1/72	3,500		5/71	500	20.50
				3/72	2,000				
				2/73	5,000	33,500			
e President-Group Lead	750	9/72	50,000			50,000			
e President-Group Head	1,500	2/67	30,000	2/69	4,000		6/69	700(IP)	5.60
				2/70	4,000		6/69	725	14.00
				1/72	4,000		8/70	1,000	6.00
				2/73	5,000		5/71	1,250(IP)	8.05
ecutive V.P. and Managing Director	7,500	1/73	80,000			80,000			
Gardner Advertising Company									
corporated									
e President-Account Supervisor	250	12/69	28,000	1/72	4,000				
				2/73	4,000	36,000	5/71	750	20.50
e President-Account Supervisor	250	1/70	25,000	12/70	3,000				
				1/72	2,500				
				2/73	3,000	33,500	9/70	500	8.375
e President-Account Supervisor	750	11/68	20,000	1/70	2,500				
				11/72	17,500	40,000			
oup Head	750	1/73	42,500						

y in July, 1972 and was rehired in October, 1972.
y termination 1,100 shares granted pursuant to
00 shares granted pursuant to the Incentive
and were reacquired, respectively.

669a

PLAINTIFF'S EXHIBIT 39

Two Identical Letters Dated August 21, 1973, Signed "Terms Approved" by Arnold M. Grant and Troy V. Post.

Aug 21, 1972

PLAINTIFF Exhibit 39 ~~ZD~~

Wells, Rich, Greene, Inc. / 767 Fifth Avenue / New York, N.Y. 10022 / Plaza 8-4300

August 21, 1972

Arnold M. Grant, Esq.
Compensation Committee
477 Madison Avenue
New York, New York

Dear Mr. Grant:

As you know on October 20, 1971, the Board of Directors approved execution of an amended employment agreement with Charles Moss and employment agreements with Frank G. Colnar, Frederick L. Jacobs and Richard T. O'Reilly. The various agreements provide for the grant of stock options of 13,750 shares to Charles Moss and 5,000 shares each to Frank G. Colnar, Frederick L. Jacobs and Richard T. O'Reilly. Since there were insufficient shares available in the Stock Option Plan at the time the contracts were executed, the Stockholders were asked to authorize, and they did authorize, sufficient additional shares at the Annual Stockholders' Meeting on March 8, 1972.

However, shortly before the Stockholders' Meeting, the Pay Board published Economic Stabilization Regulations the effect of which, apparently, was to prohibit the issuance of these stock options. Hughes, Hubbard and Reed, therefore, cautioned us to await further clarification of the regulations before making the contemplated grants. They have now advised us that a recent Ruling clearly applies to us and permits the grant of these stock options.

Accordingly, Mrs. Lawrence has now asked me to forward to you and the members of your committee her recommendations for the award of said stock options, as follows:

It is requested that the options be granted in accordance with the terms of the Stock Option Plan and contain the following provisions:

1. That they be qualified and non-qualified options granted at the same time with offset (tandem).

2. That the option price be 100% of the fair market value on the date on which the option is granted.

3. That one-third of the options granted may be exercised after six months from the date granted, one-third eighteen months from the date granted and one-third thirty months from the date granted.

4. That the rights to exercise qualified options shall expire not later than five years from the date on which the option is granted; that the right to exercise non-qualified options shall expire not later than ten years from the date on which the option is granted.

5. That the options, when exercised, may be paid for in installments subject to appropriate governmental regulations with regard to such installments and in accordance with the terms of the Stock Option Plan; and that the interest on any unpaid installments shall be at the rate of 4% per annum.

Will you kindly indicate your action at the bottom hereof and return same to me at your earliest convenience.

Very truly yours,

Frederick L. Jacobs, Secretary

cc: Troy V. Post
Emilio Pucci

Terms Approved:

Arnold M. Grant

Terms Disapproved:

Arnold M. Grant

Hughes Hubbard & Reed
One Wall Street
New York 10005

TELEPHONE 212 WHITEHALL 3-8500
CABLE HUGHREED NEW YORK
TELEX 12-6587

EUROPEAN OFFICE
9, RUE QUENTIN-BAUCHART
PARIS 8e
TELEPHONE 225-38-01
CABLE HUGHREED PARIS
TELEX 28260

N S ALLEE
L H BAUM
ARD S DAVIS
N WESTBROOK FAGER
N C FONTAINE
HOMAS GILROY, JR
EN S HUBBARD
EN S HUBBARD, JR.
LYA L KEARSE
HARD A KIMBALL, JR.
CRATT PEARSALL
LL PIERPOINT
RY PILONER, JR
ARD S REDINGTON
NCIS C REED
ME I ROSENBERG
ERT SCHEFF
L H SCHELL
MAS G SCHUELLER
ME G SHAPIRO
ERT J SISK
LAND STEBBINS, JR.
HER SURRECK
D R TILLINGHAST
EPH TRACHTMAN

August 15, 1972

Frederick L. Jacobs, Esq.
Senior Vice President
Wells, Rich, Greene, Inc.
767 Fifth Avenue
New York, N.Y. 10022

Dear Fred:

We have in the past week discussed the grant of options to Messrs. Moss, Colnar and O'Reilly and yourself. This letter will summarize my advice to you. By employment contracts dated November 1, 1971, the Agency has agreed to grant options to you and the other three employees mentioned above. At that time we advised the Agency that until a Pay Board ruling clarifies whether additional shares could be authorized under an existing stock option plan and options granted as to those shares, the Agency should not grant these four options. Each employment contract reflected the fact that wage-price controls in effect at that time did not permit the granting of the particular option. In the minutes and other documents we have reviewed, neither the Board nor the Compensation Committee has taken any action sufficient to constitute the granting of these options.

On July 26, 1972, the Pay Board ruled that an existing stock option plan could, in their words, be "replenished" without Pay Board approval, provided that the grant of options during the issuer's fiscal year does not exceed the number allowable under § 201.76(b)(1) of the Economic Stabilization Regulations with regard to the plan before replenishment and all other conditions of that subsection are met. Subject to these conditions, the Agency may now follow its usual procedures for the granting of options and grant these four options.

Sincerely,

Don Schueller

Wells, Rich, Greene Inc / 767 Fifth Avenue / New York, N.Y. 10022 / Plaza 8-4300

August 21, 1972

Arnold M. Grant, Esq.
Compensation Committee
477 Madison Avenue
New York, New York

Dear Mr. Grant:

As you know on October 20, 1971, the Board of Directors approved execution of an amended employment agreement with Charles Moss and employment agreements with Frank G. Colnar, Frederick L. Jacobs and Richard T. O'Reilly. The various agreements provide for the grant of stock options of 13,750 shares to Charles Moss and 5,000 shares each to Frank G. Colnar, Frederick L. Jacobs and Richard T. O'Reilly. Since there were insufficient shares available in the Stock Option Plan at the time the contracts were executed, the Stockholders were asked to authorize, and they did authorize, sufficient additional shares at the Annual Stockholders' Meeting on March 8, 1972.

However, shortly before the Stockholders' Meeting, the Pay Board published Economic Stabilization Regulations the effect of which, apparently, was to prohibit the issuance of these stock options. Hughes, Hubbard and Reed, therefore, cautioned us to await further clarification of the regulations before making the contemplated grants. They have now advised us that a recent Ruling clearly applies to us and permits the grant of these stock options.

Accordingly, Mrs. Lawrence has now asked me to forward to you and the members of your committee her recommendations for the award of said stock options, as follows:

It is requested that the options be granted in accordance with the terms of the Stock Option Plan and contain the following provisions:

1. That they be qualified and non-qualified options granted at the same time with offset (tandem).

2. That the option price be 100% of the fair market value on the date on which the option is granted.

3. That one-third of the options granted may be exercised after six months from the date granted, one-third eighteen months from the date granted and one-third thirty months from the date granted.

4. That the rights to exercise qualified options shall expire not later than five years from the date on which the option is granted; that the right to exercise non-qualified options shall expire not later than ten years from the date on which the option is granted.

5. That the options, when exercised, may be paid for in installments subject to appropriate governmental regulations with regard to such installments and in accordance with the terms of the Stock Option Plan; and that the interest on any unpaid installments shall be at the rate of 4% per annum.

Will you kindly indicate your action at the bottom hereof and return same to me at your earliest convenience.

Very truly yours,

Frederick L. Jacobs, Secretary

cc: Troy V. Post
Emilio Pucci

Terms Approved:

Troy V. Post

Terms Disapproved:

Troy V. Post

PLAINTIFF'S EXHIBIT 40

Letter Dated January 10, 1972, with attachment

PLAINTIFF Exhibit 40 SP JANUARY 12, 1972

Wills, Rich, Greene, Inc. / 767 Fifth Avenue / New York, N.Y. 10022 / Plaza 8-4300

January 10 , 1972

Arnold M. Grant, Esq.
Compensation Committee, Chairman
660 Madison Avenue
New York, New York

Dear Mr. Grant:

Mrs. Lawrence has asked me to forward to you and to the members of your Committee for consideration by the Committee, management's recommendations for awards of stock option grants and an incentive stock purchase grant as set forth in the attached shedule.

It is requested that any stock options granted contain the following provisions:

1. That they be qualified and non-qualified options granted at the same time with offset (tandem).

2. That the option price be 100% of the fair market value on the date on which the option is granted.

3. That one third of the options granted may be exercised after six months from the date granted, one third eighteen months from the date granted and one third thirty months from the date granted.

4. That the rights to exercise qualified options shall expire not later than five years from the date on which the option is granted; that the right to exercise non-qualified options shall expire not later than ten years from the date on which the option is granted.

Since there have been no changes in the Company's Incentive Stock Purchase Plan, it is requested that upon favorable determination the terms be the same as previously.

Will you kindly indicate your action at the botton of each page of the attached schedule and return to me at your convenience.

Options & Terms Approved

Options & Terms Disapproved

None

Very truly yours,

Frederick L. Jacobs, Secy.

cc: Troy V. Post
Emilio Pucci
enc.

Name	Stock Option Requested	Began Employment Date	Began Employment Salary	Raises Since Employment Date	Raises Since Employment Amount	Current Salary	Prior Options Date	Prior Options Amount	Prior Options Price
Anthony Caulfield	1,500	11/1/68	$22,000	11/1/70	5,000	$27,000		NONE	
Hans Zucker	900 *	10/16/68	13,000	1/1/69	1,500				
				5/1/70	2,500				
				9/15/71	4,000	21,000		NONE	
Jose Abarquez **	250	1/8/68	10,000	7/1/68	1.000				
				2/1/69	1,500				
				6/1/71	2,000	14,500		NONE	

678a

* 500 shares pursuant to the Stock Option Plan and 400 shares pursuant to the Incentive Stock Purchase Plan.

** resigned May 8, 1969 and was rehired June 1, 1971.

None of the above are under contract to the Company.

PLAINTIFF'S EXHIBIT 41

Letter Dated May 7, 1971, with attachments

PLAINTIFF Exhibit 41 KD MAY 10, 1971

Wells, Rich, Greene, Inc. / 767 Fifth Avenue / New York, N.Y. 10022 / Plaza 8-4300

May 7, 1971

Arnold M. Grant, Esq.
Compensation Committee, Chairman
660 Madison Avenue
New York, New York

Dear Mr. Grant:

I have been requested by management to recommend that pursuant to the Amended Stock Option Plan the Committee award a non-qualified stock option of 150,000 shares to Mary Wells Lawrence and that said option, if granted, contain the following provisions:

1. That the option price shall be 100% of the fair market value on the date on which the option is granted or $20.50 per share, whichever is higher.

2. That neither the entire option nor any portion thereof shall be exercisable for a period of six (6) months from the date the option is granted.

3. That the right to exercise said option shall expire not later than ten (10) years from the date on which the option is granted.

4. That payment for shares purchased upon exercise of the option may be made in installments subject to appropriate governmental regulations with regard to such installments and in accordance with the terms of the Amended Stock Option Plan; and that the interest on any unpaid installments shall be at the rate of 4% per annum.

Will you kindly indicate your action by signing on the appropriate line on the enclosed copy of this letter.

Very truly yours,

Frederick L. Jacobs
Secretary

cc: Troy V. Post
Emilio Pucci

Option Granted

Arnold M. Grant

Option Not Granted

Arnold M. Grant

Wells, Rich, Greene, Inc. / 767 Fifth Avenue / New York, N.Y. 10022 / Plaza 8-4300

May 7, 1971

Arnold M. Grant, Esq.
Compensation Committee, Chairman
660 Madison Avenue
New York, New York

Dear Mr. Grant:

I have been requested by management to recommend that pursuant to the Amended Stock Option Plan the Committee award a non-qualified stock option of 150,000 shares to Mary Wells Lawrence and that said option, if granted, contain the following provisions:

1. That the option price shall be 100% of the fair market value on the date on which the option is granted or $20.50 per share, whichever is higher.

2. That neither the entire option nor any portion thereof shall be exercisable for a period of six (6) months from the date the option is granted.

3. That the right to exercise said option shall expire not later than ten (10) years from the date on which the option is granted.

4. That payment for shares purchased upon exercise of the option may be made in installments subject to appropriate governmental regulations with regard to such installments and in accordance with the terms of the Amended Stock Option Plan; and that the interest on any unpaid installments shall be at the rate of 4% per annum.

Will you kindly indicate your action by signing on the appropriate line on the enclosed copy of this letter.

Very truly yours,

Frederick L. Jacobs
Secretary

cc: Troy V. Post
Emilio Pucci

Option Granted

Troy V. Post

Option Not Granted

Troy V. Post

Wells, Rich, Greene, Inc. / 767 Fifth Avenue / New York, N.Y. 10022 / Plaza 8-4300

May 7, 1971

Arnold M. Grant, Esq.
Compensation Committee, Chairman
660 Madison Avenue
New York, New York

Dear Mr. Grant:

I have been requested by management to recommend that pursuant to the Amended Stock Option Plan the Committee award a non-qualified stock option of 150,000 shares to Mary Wells Lawrence and that said option, if granted, contain the following provisions:

1. That the option price shall be 100% of the fair market value on the date on which the option is granted or $20.50 per share, whichever is higher.

2. That neither the entire option nor any portion thereof shall be exercisable for a period of six (6) months from the date the option is granted.

3. That the right to exercise said option shall expire not later than ten (10) years from the date on which the option is granted.

4. That payment for shares purchased upon exercise of the option may be made in installments subject to appropriate governmental regulations with regard to such installments and in accordance with the terms of the Amended Stock Option Plan; and that the interest on any unpaid installments shall be at the rate of 4% per annum.

Will you kindly indicate your action by signing on the appropriate line on the enclosed copy of this letter.

Very truly yours,

Frederick L. Jacobs
Secretary

cc: Troy V. Post
Emilio Pucci

Option Granted

Emilio Pucci

Emilio Pucci

Option Not Granted

Emilio Pucci

MAY 10, 1971

Wells, Rich, Greene, Inc / 767 Fifth Avenue / New York, N.Y. 10022 / Plaza 8-4300

May 7, 1971

Arnold M. Grant, Esq.
Compensation Committee, Chairman
660 Madison Avenue
New York, New York

Dear Mr. Grant:

Mrs. Lawrence has asked me to forward to you and to the members of your Committee for consideration by the Committee, management's recommendations for awards of stock option grants and incentive stock purchase rights as set forth in the attached schedule.

It is requested that any options granted in accordance with the terms of the Amended Stock Option Plan and shall contain the following provisions:

1. That they be qualified and non-qualified options granted at the same time with offset (tandem).

2. That the option price be 100% of the fair market value on the date on which the option is granted or $20.50 per share, whichever is higher.

3. That one third of the options granted may be exercised after six months from the date granted, one third eighteen months from the date granted and one third thirty months from the date granted.

4. That the rights to exercise qualified options shall expire not later than five years from the date on which the option is granted; that right to exercise non-qualified options shall expire not later than ten years from the date on which the option is granted.

5. That options of 5,000 shares or more, when exercised, may be paid for in installments subject to appropriate governmental regulations with regard to such installments and in accordance with the terms of the Amended Stock Option Plan; and that the interest on any unpaid installments shall be at the rate of 4% per annum.

Will you kindly indicate your action at the bottom of each page of the attached schedule and return to me at your earliest convenience.

Very truly yours,

Frederick L. Jacobs, Secretary

/cm
enc.
cc: Mr. Troy V. Post
Mr. Emilio Pucci

Options and Terms Approved

Options and Terms Disapproved

Wells, Rich, Greene, Inc. / 767 Fifth Avenue / New York, N.Y. 10022 / Plaza 8-4300

May 7, 1971

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Frederick L. Jacobs
Secretary

/cm
enc.
cc: Troy V. Post
Emilio Pucci

5/10/71
Date

Options and Terms Approved

Options and Terms Disapproved

Wells, Rich, Greene Inc. / 767 Fifth Avenue / New York, N.Y. 10022 / Plaza 8-4300

May 7, 1971

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Very truly yours,

Frederick L. Jacobs
Secretary

/cm
enc.
cc: Troy V. Post
Emilio Pucci

Optionsand
Terms Approved

Emilio Pucci 10-May-1971
Emilio Pucci Date

Optionsand
Terms Disapproved

NAME
Senior Vice Presiden
Frederick L. Jaco
Frank G. Colner
Charles Moss
Richard T. O'Neil
Martin Stern
Creative
Herb Green
George D'Amato
Howard Cohen
Charles Ashby
Jacqueline End
Donn Resnick

NAME	Descriptive Title	STOCK OPTION OR INCENTIVE STOCK PURCHASE REQUESTED		EMPLOYMENT HISTORY					PRIOR OPTIONS OR INCENTIVE PURCHASES (IP)		
		Stock Option	Incentive Purchase	Began Employment	Salary	Raises Date	Raises Amount	Current Salary	Date	Amount	Price
Senior Vice Presidents											
Frederick L. Jacobs	Sr. V.P.-Admin.	7500		3/67	$30,000	6/67	$20,000				
						7/68	15,000				
						5/69	5,000	$ 70,000	-	-	-
Frank G. Colner	Sr. V.P.-Finan. Plng.	7500		6/68	55,000	5/69	15,000	70,000	10/30/68	25,000IP	$ 7.00
Charles Moss	Sr. V.P.-Creative Srvcs.	7500		4/66	35,000	5/67	5,000				
						9/67	10,000				
						6/68	15,000				
						5/69	35,000	100,000	6/27/69	10,000	14.00
Richard T. O'Reilly	Sr. V.P.-Acct. Services	7500		4/66	80,000	12/70	20,000	100,000	2/12/69	10,000	15.00
									2/12/69	8,100IP	6.00
									6/27/69	21,900IP	5.60
Martin Stern	Sr. V.P.-Sales Director	7500		1/68	42,500	5/69	3,500				
						4/70	4,000	50,000	9/23/70	7,500	8.375
Creative											
Herb Green	VP-Copywriter	2500		6/66	35,000	9/67	5,000				
						9/68	10,000				
						11/69	10,000	60,000	6/27/69	1,500	14.00
George D'Amato	VP-Art Director	2500		6/66	35,000	6/67	5,000				
						9/68	10,000				
						11/69	10,000	60,000	6/27/69	1,500	14.00
Howard Cohen	Copywriter	1750		9/67	25,000	2/69	2,500				
						2/70	2,500				
						1/71	3,500	33,500	-	-	-
Charles Ashby	VP-Copywriter	4500		3/69	25,000	7/69	3,000				
						4/70	5,000				
						11/70	4,000				
						1/71	10,000	47,000	9/23/70	1,800	8.375
Jacqueline End	Copywriter	3500		3/69	20,000	10/69	2,500				
						4/70	3,500				
						11/70	4,000	30,000	9/23/70	900	8.375
Donn Resnick	Copywriter	3000		3/69	35,000	1/71	3,500				
						4/71	6,500	45,000	-	-	-

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NAME	Descriptive Title	STOCK OPTION OR INCENTIVE STOCK PURCHASE REQUESTED		EMPLOYMENT HISTORY					PRIOR OPTIONS OR INCENTIVE PURCHASES (IP)		
		Stock Option	Incentive Purchase	Began Employment	Salary	Raises Date	Raises Amount	Current Salary	Date	Amount	Price
Bob Pasqualina	Art Director	1750		7/67	25,000	8/69	2,500				
						11/70	2,500	30,000	-	-	-
Gerry Ranson	VP-Art Director	1500		2/69	30,000	1/70	5,000				
						11/70	3,000	38,000	9/23/70	900	8.375
Bob Reitzfeld	VP-Art Director	1500		12/66	35,000	1/69	5,000				
						10/69	5,000				
						1/71	5,000	50,000	-	-	-
Frank Kirk	Art Director	1000		7/68	50,000	-	-	50,000	10/30/68	3,800	17.50
									10/30/68	2,200IP	7.00
Brian Olesky	Copywriter	1000		6/69	22,000	6/70	5,000	27,000	-	-	-
Maurice Mahler	Art Director	1000		3/70	40,000	-	-	40,000	9/23/70	900	8.375
Alex Tsao	Art Director	1000		4/69	50,000	-	-	50,000	1/15/70	1,000	13.00
Hal Altman	Copywriter	500		11/68	23,000	8/69	2,000	25,000	-	-	-
Jeffrey Frey	Copywriter	500		11/67	21,000	10/68	4,000				
						7/69	3,000				
						11/70	3,000	31,000	9/23/70	600	8.375
Murray Jacobs	VP Sls. Prom./Art	500		6/67	35,000	11/68	5,000				
						1/70	5,000	45,000	-	-	-
Cay Gibson	VP Sls. Prom./Copy	500		6/67	35,000	11/68	5,000				
						1/70	5,000	45,000	-	-	-
Nat Waterston	VP-Creative Manager	500		7/67	35,000	1/68	5,000				
						1/69	5,000		6/27/69	1,000IP	5.60
						1/70	5,000	50,000	10/30/68	600IP	7.00
									10/30/68	1,900	17.50
Harold Singer	VP - Print Production	500		6/66	15,000	1/67	3,000				
						11/67	7,000				
						11/68	5,000				
						9/69	5,100				
						11/70	3,000	38,100	6/27/69	1,000	14.00
									6/27/69	1,000IP	5.60

687a

A. Frank F.

NAME	Descriptive Title	STOCK OPTION OR INCENTIVE STOCK PURCHASE REQUESTED		EMPLOYMENT HISTORY					PRIOR OPTIONS OR INCENTIVE PURCHASES (IP)		
		Stock Option	Incentive Purchase	Began Employment	Salary	Date	Amount	Current Salary	Date	Amount	Price
Bert Neufeld	Copywriter	500		12/68	35,000	3/69	5,000				
						11/70	3,000	43,000	6/27/69	1,500	14.00
									6/27/69	1,000IP	5.60
									9/23/70	900	8.375
Account Services											
John Burns	VP - Group Head	7500									
C. Al Wolfe	VP - Group Head	5000		7/67	55,000	8/69	7,500	62,500	-	-	-
				9/66	28,000	2/67	3,500				
						10/68	3,000				
						1/70	4,500	39,000	10/30/68	600IP	7.00
Vic Olesen	VP - Group Head	5000							10/30/68	1,900	17.50
				8/67	33,000	8/68	3,000				
						2/69	4,000				
Charles Hamm	VP - Group Head	-	1250			11/69	7,000	47,000	6/27/69	500	14.00
				2/67	30,000	2/69	4,000				
						2/70	4,000	38,000	6/27/69	725	14.00
									6/27/69	700IP	5.60
Vic Lynn	VP - Group Head	1250							8/ 5/70	1,000	6.00
				9/68	35,000	5/69	5,000				
						1/71	5,000	45,000	6/27/69	1,250	14.00
Martin Mitchell	Account Supervisor	900							6/27/69	1,250IP	5.60
				9/68	24,000	10/69	2,500				
						11/70	3,000	29,500	6/27/69	300IP	5.60
									6/27/69	400	14.00
Arnold Weinrib	Account Supervisor	750							9/23/70	500	8.375
Howard Englehardt	Account Executive	500		11/69	34,000	-	-	34,000	6/28/70	500	6.00
Howard Johnson	Account Supervisor	400		2/71	21,000	-	-	21,000	-	-	-
				8/67	16,500	2/68	1,500				
						2/69	2,500				
						2/70	4,500				
Matt Mansfield	Account Supervisor	750				2/71	2,500	27,500	6/27/69	500	14.00
				12/69	28,000	-	-	28,000	-	-	-

6888

NAME	Descriptive Title	STOCK OPTION OR INCENTIVE STOCK PURCHASE REQUESTED		EMPLOYMENT HISTORY					PRIOR OPTIONS OR INCENTIVE PURCHASES (IF)		
		Stock Option	Incentive Purchase	Began Employment	Salary	Raises Date	Raises Amount	Current Salary	Date	Amount	Price
Ed Ritchkoff	Account Executive	500		12/68	16,000	7/69 1/70 9/70	2,000 2,000 1,500	21,500	-	-	-
Jon Siegel	Account Executive	500		7/70	20,000	2/71	1,500	21,500	-	-	-
Don Challis	Account Supervisor	500		11/70	23,000	-	-	23,000	-	-	-
Robert Wolf	Account Supervisor	300		1/71	23,000	-	-	23,000	-	-	-
Joseph Smyth	Account Supervisor	350		1/70	29,000	10/70	2,000	31,000	9/23/70	500	8.375
John Baity	Account Supervisor	300		1/71	30,000	-	-	30,000	-	-	-
Vincent Minicucci	Account Supervisor	250		10/68	16,000	9/69 1/70 1/71	2,000 2,500 2,000	22,500	-	-	-
Ed Meyer	Account Executive	250		9/70	26,000	-	-	26,000	-	-	-
Mike Carberry	Account Executive	250		8/69	17,000	2/70. 11/70	2,000 3,000	22,000	6/28/70	500	6.00
Ed Jewett	Account Executive	200		7/69	25,000	-	-	25,000	-	-	-
Media											
John Hughes	VP-Media Director	650	850	9/68	24,000	10/69 3/70	2,000 6,000	32,000	6/28/70	1,500	6.00
Lew Wechsler	VP-Dir. of TV & Network	500		1/67	25,000	7/67 11/68 1/70	5,000 5,000 4,000	39,000	6/29/69	1,500	14.00
Irwin Fleischer	Media Supervisor		400	4/67	20,000	5/68 8/69 3/70	2,000 1,750 2,000	25,750	6/28/70	500	6.00
Robert Igiel	TV Network Buyer	400		9/67	11,500	4/68 4/69 3/70 8/70	3,500 2,000 2,000 1,000	20,000	-	-	-

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NAME	Descriptive Title	STOCK OPTION OR INCENTIVE STOCK PURCHASE REQUESTED		EMPLOYMENT HISTORY					PRIOR OPTIONS OR INCENTIVE PURCHASES (IP)		
		Stock Option	Incentive Purchase	Began Employment	Salary	Raises Date	Raises Amount	Current Salary	Date	Amount	Price
Administration											
Gerald Kessler	VP-Finance	2500		3/67	15,000	1/68	3,000				
						5/68	7,000				
						2/69	5,000	30,000	-	-	-
Richard Freedman	Controller	1750	750	9/67	12,000	1/68	1,000				
						5/68	2,500				
						2/69	5,000				
						8/69	2,000				
						2/70	2,500	25,000	6/27/69	750	14.00
Stanley Haspel	Ass't. House Counsel	250	250	1/70	25,000	-	-	25,000	9/23/70	500	8.375
Lester Sivyour	Billings Supervisor	500		3/69	9,500	7/69	2,000				
						5/70	3,000	14,500	-	-	-
Irving Goldsmith	Accountant	450		4/67	8,328	9/67	780				
						1/68	900				
						5/68	1,000				
						2/69	1,000				
						11/69	1,000				
						11/70	1,500	14,500	6/27/69	50	14.00
Martin Banner	Chief Accountant	300		3/69	14,000	9/69	2,500				
						10/70	1,500	18,000	6/27/69	200-	14.00
Media Research											
Murray Hysen	VP-Research Director	1500		6/68	35,000	8/69	3,500				
						1/70	3,500	42,000	10/30/68	5,000IP	7.00
Executive											
Kathy Durham	Assistant to the President	500		6/67	6,760	10/67	520				
						7/68	1,560				
						8/68	1,160				
						3/69	5,000				
						1/70	10,000	25,000	9/23/70	400	8.375

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PLAINTIFF'S EXHIBIT 42

Affidavit of Nathan Belfer, as hereinbefore reproduced

DEFENDANTS' EXHIBIT A

Affidavit of Robert J. Sisk, with Attachments, as heretofore reproduced

DEFENDANTS' EXHIBIT B

Comparison Of Recent Cash Tender Offer

Offering Date	Company Tendered For; Purchaser
1/25/72	J.J. Newberry/Rapid-American
3/7/72	Nicholson File/H.K. Porter
7/10/72	Colorado Interstate/CoastalStates Gas
7/14/72	Allied Mills/Continental Grain
7/20/72	Akzona Inc./Akzo N.V.
8/9/72	King's Lafayette/Edmond Safic
8/21/72	MCA/Tracinda Investment
10/25/72	Rheingold/Pepsico
11/2/72	Pasco Petroleum/LVO Corp.
12/26/72	Talcott National/Gulf & Western
12/26/72	McCrory Corp./Rapid-American
1/23/73	National General/American Financial C
1/30/73	Modern Foods/Katy Industries
2/1/73	A & P/Gulf & Western
2/5/73	California-Western States Life Ins./ American General Insurance Co.
2/8/73	EZ Painter/Hewell Companies
2/20/73	Western Maryland Railroad/B & O R.R.
3/6/73	Elco/Microdot Inc.
3/16/73	General Host/Triumph American
3/27/73	P & A Industries/Cadence Industries
3/27/73	Talcott National/Loews Corp.
4/5/73	General Battery/Northwest Industries
4/6/73	Co-Build Companies/Residex Corp.
4/23/73	Mercantile Industries/Key Corp.
4/25/73	Hi-Shear Corp./Frank Klaus
5/1/73	Meridian Invest & Devel./DLJ
5/4/73	Certainteed Products/Compagne de St.
5/9/73	Sonesta Int'l. Hotels/Wellington Asso
5/14/73	Franklin Stores/Slater Walker of Ameri
5/21/73	Foster Grant/United Brands
5/31/73	Bonsor Corp/Liquefin A.G.
6/4/73	Hoskins Manufacturing/Armada Corp.
6/4/73	Glubel Bros./Loew's
6/8/73	State Savings & Loan/Budget Industries
6/11/73	Allied Mills/Continental Grain
6/12/73	Glubel Bros/Brown & Williamson Tobacco
6/25/73	General Development/City Investing
6/29/73	Midcontinent Realty/Reynolds Developme
7/2/73	Brown Co/Gulf & Western
7/9/73	Pasco Inc./Studebaker Worthington
7/11/73	Conmrex Corp/Chloride Group Ltd.
7/17/73	Coronco/Schiavone & Sons

Comparison of Recent Cash Tender Offer

Offering Date	Company Tendered For; Purchaser	Number of Shares Desired (000)	Total Market Value of Desired Shares (000)	Tender Price	Premium Over Pre-Tender Market Price	Soliciting Dealers Fee: Actual Amount Per Share	Soliciting Dealers Fee: As a Percent of Tender Price	Soliciting Dealers Fee: As a Percent of NYSE Commission	Dealer Manager Fee: Actual Amount Per Share	Dealer Manager Fee: As a Percent of Soliciting Dealer's Fee	Dealer-Managers
1/25/72	J.J. Newberry/Rapid-American	850	$ 18,700	$ 22.00	29.4%	$1.00	4.5%	246%	None	-	None
3/7/72	Nicholson File/H.K. Porter	437	18,354	42.00	34.4%	$ .80	1.9%	134%	None	-	None
7/10/72	Colorado Interstate/CoastalStates Gas	1,800	72,000	40.00	18.3%	$1.00	2.5%	172%	Not available		Kuhn Loeb; Paine Webber
7/14/72	Allied Mills/Continental Grain	500	12,000	24.00	1.6%	$ .37	2.4%	132%	$ .18	31.6%	Lazard Freres
7/20/72	Akzona Inc./Akzo N.V.	750	24,750	33.00	9.1%	$ .65	2.0%	126%	None	-	Morgan Stanley
8/9/72	King's Lafayette/Edmond Safic	155	6,217	40.00	2.6%	$ .80	2.0%	138%	Not available		CBWL-Hayden Stone; H.A. Shapiro
8/21/72	MCA/Tracinda Investment	100	2,250	22.50	7.1%	$ .50	2.2%	121%	None	-	None
10/25/72	Rheingold/Pepsico	1,600	35,200	22.00	24.8%	$ .60	2.7%	148%	Not available		Allen & Co.
11/2/72	Pabco Petroleum/LVO Corp.	2,000	20,000	10.00	40.4%	$ .25	2.5%	100%	$ .10	40.0%	Bear Stearns
12/26/72	Talcott National/Gulf & Western	1,502 Min.	30,040	20.00	5.0%	$ .55	2.8%	165%	$ .15	27.3%	White, Weld-Goldman Sachs
12/26/72	McCrory Corp./Rapid-American	1,000	32,000	32.00	28.0%	$1.00	3.1%	197%	None	-	None
1/23/73	National General/American Financial Corp.	4,000	27,000	6.75	8.0%	$ .25	3.7%	126%	None	-	None
1/30/73	Modern Foods/Faty Industries	1,131 Min.&Warrants	4,521	4.00	33.3%	$ .20	5.0%	139%	None	-	None
2/1/73	A & P/Gulf & Western	3,750	75,000	20.00	18.5%	$ .75	3.8%	197%	$ .15	20.0%	Kidder Peabody
2/5/73	California-Western States Life Ins./ American General Insurance Co.	600 Min.	12,000	20.00	26.0%	$ .60	3.0%	158%	$ .15	25.0%	Lehman Bros.
2/8/73	EZ Painter/Newell Companies	250	3,750	15.00	15.4%	$ .50	3.3%	159%	None	-	None
2/20/73	Western Maryland Railroad/B & O R.R.	137 Min.	2,055	15.00	13.2%	$ .50	3.3%	159%	$ .10	20.0%	Halsey Stuart
3/6/73	Elco/Microdot Inc.	700 Min.	4,900	7.00	16.7%	$ .20	2.9%	98%	$ .06	30.0%	Walston
3/16/73	General Host/Triumph American	1,075	19,888	18.50	35.8%	$ .50	2.7%	139%	$ .15	30.0%	C.E. Unterberg-Towbin; Abraham & Co.
3/27/73	F & A Industries/Cadence Industries	353	3,534	10.00	23.1%	$ .375	3.8%	150%	None	-	None
3/27/73	Talcott National/Loews Corp.	1,700 Min.	28,900	17.00	24.8%	$ .35	2.1%	103%	$ .15	42.9%	White, Weld-Goldman Sachs
4/5/73	General Battery/Northwest Industries	1,599 Min.	54,363	34.00	9.2%	$ .50	1.5%	95%	$ .20	40.0%	Bear Stearns
4/6/73	Co-Build Companies/Residex Corp.	600 Min.	4,200	7.00	33.3%	$ .30	4.3%	147%	Not available		Swiss American
4/23/73	Mercantile Industries/Key Corp.	200	2,700	13.50	16.1%	None	-	-	-	-	None
4/25/73	Hi-Shear Corp./Frank Kleus	265 Min.	2,650	10.00	42.9%	$ .60	6.0%	240%	$ .20	33.3%	Selzer Arnett & Spillane
5/1/73	Meridian Invest & Devel./DLJ	1,044 Min.	7,308	7.00	47.4%	$ .30	4.3%	147%	$ .10	33.3%	White, Weld
5/4/73	Certainteed Products/Compagne de St. Gobain	1,750	36,750	21.00	21.6%	$ .65	2.9%	153%	$ .15	25.0%	Morgan Stanley-Kuhn Loeb-Swiss American
5/9/73	Sonesta Int'l. Hotels/Wallington Assoc.	1,000	7,000	7.00	40.0%	$ .25	3.6%	122%	None	-	None
5/14/73	Franklin Stores/Slater Walker of America	1,040	21,840	21.00	(4.2%)	None	-	-	None	-	None
5/21/73	Foster Grant/United Brands	600	15,000	25.00	31.3%	$ .65	2.6%	146%	Not available	-	Goldman Sachs
5/31/73	Ronson Corp/Liquefin A.G.	2,200	18,700	8.50	33.3%	$ .35	4.1%	152%	Not available	-	Kuhn Loeb
6/4/73	Hoskins Manufacturing/Armada Corp.	725	14,500	20.00	27.0%	$ .50	2.9%	132%	$ .15	30.0%	Faulkner Dawkins-First of Michigan
6/4/73	Glubel Bros./Loew's	2,650	42,400	16.00	24.3%	$ .35	2.2%	107%	$ .15	42.9%	Lehman Bros.-Goldman Sachs
6/8/73	State Savings & Loan/Budget Industries	175	1,750	10.00	17.7%	$ .40	4.0%	160%	$ .15	37.5%	Dean Witter
6/11/73	Allied Mills/Continental Grain	706	16,948	24.00	26.3%	$ .57	2.4%	132%	$ .18	31.6%	Lazard Freres
6/12/73	Gimbel Bros/Brown & Williamson Tobacco	4,300 min. 8,500 max.	98,900 min. 195,000 max.	23.00	49.7%	$ .50	2.2%	119%	$ .10	20.0%	Lazard Freres
6/25/73	General Development/City Investing	1,000	9,000	9.00	7.9%	$ .125	1.4%	53%	Not available	-	Blyth Eastman Dillon
6/29/73	Midcontinent Realty/Reynolds Development	340	5,950	17.50	27.3%	$ .65	3.7%	187%	Not available	-	William Blair
7/2/73	Brown Co/Gulf & Western	900	9,375	10.75	11.7%	$ .50	4.7%	193%	Not available	-	Kidder Peabody
7/9/73	Pasco Inc./Studebaker Worthington	1,000	11,500	11.50	22.7%	$ .40	3.5%	148%	$ .10	25.0%	Goldman Sachs
7/11/73	Conarex Corp/Chloride Group Ltd.	960 min. 1,317 max.	15,360 min. 21,064 max.	16.00	21.9%	$ .40	2.5%	122%	Flat Fee		Goldman Sachs
7/17/73	Corenco/Schiavone & Sons	90 min. 130 max.	2,970 min. 4,290 max.	33.00	32.0%	$ .50	1.5%	97%	$ .17	34.0%	Bear Stearns

Comparison of Recent Cash Tender Offer

Offering Date	Company Tendered For; Purchaser	Number of Shares Desired (000)	Total Market Value of Desired Shares (000)	Tender Price	Premium Over Pre-Tender Market Price	Soliciting Dealer's Fee: Actual Amount Per Share	Soliciting Dealer's Fee: As a Percent of Tender Price	Soliciting Dealer's Fee: As a Percent of NYSE Commission	Dealer Manager Fee: Actual Amount Per Share	Dealer Manager Fee: As a Percent of Soliciting Dealer's Fee	Dealer Managers
7/23/73	Cable Funding/Coaxial Communications	325	$ 3,250	$10.00	90.5	$0.35	3.5	140%	$ 0.0625	17.9	W.E. Hutton, Chicago Corp.
7/24/73	Texas Gulf/Canada Development Corp.	10,000	290,000	29.00	19.6	0.69	2.2	135	0.10 to <5M 0.05 to 10M	15.3	Loeb Rhoades
7/25/73	Colonial Sand & Stone/Util. Industry Corp.	1,077	12,924	12.00	18.1	0.30	2.5	109	NONE	Not Available	None
7/26/73	T.I.M.E. Inc.-D.C. Inc./Nat'l City Lines	200	2,200	11.00	12.8	0.25	2.3	95	Not Available	Not Available	First Southwest
7/26/73	T.I.M.E. Inc.-D.C. Inc./Nat'l City Lines	200	2,500	12.50	25.0	0.25	2.0	88	Not Available	Not Available	First Southwest
7/31/73	Cable Funding/Geneva Corp.	300 Min. 400 Max.	3,600 Min. 4,800 Max.	12.00	50.0	0.35	2.9	127	0.15	42.9	Bear Sterns
8/6/73	Dearborn Storm/Trafalgar House Investment	1,036	25,900	25.00	33.3	None	-	-	None	Not Available	New Court Securities
8/8/73	Bacon/Essex Chemical	400	1,400	3.50	Not Available	0.20	5.7	149	0.17	85.0	Bear Sterns
8/13/73	Signal Companies/LTV Invest. & Others	1,000	23,000	23.00	19.7	0.45	2.0	107	0.15	33.3	Loeb Rhoades
8/10/73	Int'l Transport Industries/Butler Aviation	179	1,074	6.00	26.3	0.25	4.2	136	0.05	20.0	Woodlard & Co.
8/20/73	Collins Radio/Rockwell Int'l	2,968	74,200	25.00	17.7	0.60	2.4	135	Not Available	Not Available	Kuhn Loeb
8/20/73	Travelodge Int'l/Trust Houses Forte Ltd.	2,595	29,842	11.50	53.3	0.35	3.0	130	0.15	42.9	E.F. Hutton
8/27/73	El Dorado General/Am. Mutual Liberty & Ins.	350	2,100	6.00	50.0	0.40	6.7	217	0.25	62.5	Solomon
9/7/73	Meridian Investing & Devel./Donaldson, Lufkin & Jenrette	200	1,400	7.00	55.6	0.40	5.7	196	Not Available	Not Available	G.H. Walker Laird
9/11/73	Anchor Savings Assoc./ICC Industries	524	1,476	21.90	10.9	0.45	2.1	111	Not Available	Not Available	Lehman Brothers
9/27/73	Indian Head/Thyssen Bornemisza	1,100	29,700	27.00	35.0	0.55	2.0	108	0.18	32.7	White, Weld
10/2/73	William Hodges/Falcon Products	163	1,141	7.00	Not Available	None	-	-	-	-	Fisher Corporation
											Robert Fleming (Advisor)
10/25/73	Howmet Corp./Pechiney Ugine Kuhlman Corp.	1,000	21,500	21.50	33.6	0.55	2.6	126	0.15	27.3	Lazard Freres
10/25/73	Mobile Home Communities/Trister Development	500	5,875	11.75	17.5	0.25	2.1	83	0.25	100.0	New York Securities
10/25/73	Mobile Home Communities/Trister Development	500 Warrants	105	1.75	Not Available	0.07	4.0	64	0.05	71.4	New York Securities
11/9/73	Pioneer Texas/Terrell Inc.	1,375	11,000	8.00	45.5	0.35	4.4	142	0.10	28.6	A.G. Edwards
11/13/73	Grand Union/Caves Ham Ltd.	3,200	60,800	19.00	44.3	0.45	2.4	112	0.15	33.3	Lazard Freres
11/20/73	Madison Square Garden/Gulf & Western	1,000	7,000	7.00	40.0	0.25	3.6	111	0.10	40.0	Bear Sterns
12/3/73	AIRCO/Curtis Wright	2,400	43,200	18.00	39.8	0.45	2.5	115	0.15	33.3	White, Weld
12/5/73	Cutter Labs/Rhinechem Corp. of Bayer	1,900 Class A 448 Class B	35,150	18.50	40.6	0.45	2.4	114	Not Available	Not Available	Kuhn Loeb
12/10/73	AIRCO/British Oxygen	4,000	80,000	20.00	31.9	0.50	2.5	120	0.18	30.0	Lazard Freres
12/13/73	EDP Resources/Greyhound Computer Corp.	756	2,325	3.34	Not Available	0.20	6.0	139	0.05	25.0	Hornblower & Weeks-Hemphill, Noyes
"	" "	60 Warrants	12	.20	Not Available	Not Available	Not Available	Not Available	None	None	Hornblower & Weeks-Hemphill, Noyes
"	" "	340 Warrants	17	.05	Not Available	Not Available	Not Available		None	None	Hornblower & Weeks-Hemphill, Noyes
12/19/73	Missouri Portland Cement/Cargill Inc.	1,500	45,000	30.00	23.7	0.70	2.3	130	0.15	21.4	First Boston
	1974										
1/7/74	Elk Horn Coal/Ethyl Corp.	735	18,375	25.00	3.0	0.60	2.4	123	0.10	16.7	Wheat First Securities
1/14/74	First National Stores/Madison Fund	5,750	132,250	23.00	17.2	0.40	1.7	115	None	None	None
1/17/74	Ronsen Corp./Liquifin A.G.	2,288	18,716	8.18	36.3	.35	4.3	140	Not Available	None	Kuhn Loeb
1/30/74	Buffams/David Jones Ltd.	956	16,730	17.50	100.0	.38	2.2	99	Not Available	None	Dean Witter Co.
2/23/74	Wesco/Blue Chip Stamp	131	1,956	15.00	27.7	.45	3.0	129	None	None	None
3/1/74	Commercial Solvents/Becker	800	21,200	26.50	19.6	.55	2.1	109	0.20	36.4	White Weld & Co. and F. Eberstadt
3/6/74	Elco/Energy Resources	731	5,117	7.00	33.3	.25	3.6	114	None	None	None
3/7/74	Towle Mfg./Nortek Inc.	400	4,600	11.50	2.2	.90	4.4	169	Not Available	Not Available	Dominick & Dominick
3/11/74	Commercial Solvents/Intl. Minerals	700	21,000	30.00	9.6	.60	2.2	111	Not Available	Not Available	Lehman Bros.
3/11/74	VCA/Thyssen Bornemisza	1,800	29,700	16.50	10.0	.375	2.3	103	0.125	33.3	White Weld & Co. and New Court Sec
3/14/74	VCA/Ethyl Corp.	4,384	81,104	18.50	10.5	.90	2.7	126	0.10	20.0	Blyth Eastman Dillon
3/14/74	VCA/Ethyl Corp. (pfd.)	300	5,700	19.00	13.9	.50	2.6	125	0.10	20.0	Blyth Eastman Dillon
Averages					27.5			134.7		36.2	

DEFENDANTS' EXHIBIT C

Comparison of Repurchase Offers and Comparison of Tender Offers

Offering Date	Company
1/ 5	Amerace Corp.(pfd).
1/ 7	Henry I. Siegel
1/14	MSC Industries
1/16	Questor
1/16	General Development
1/13	Merle Norman Cosmetics
1/21	Security Plastics
2/ 4	Mr. Wiggs Dept. Stores
2/11	Union America
2/25	McCoffrey & McCall Inc.
3/ 6	20th Century Fox
3/13	Northwest Industries (wts.)
3/18	E. Systems, Inc.
4/ 5	Foodarama Supermarkets
4/ 5	Technicolor, Inc.
4/23	Intercontinental Diversified
5/13	Nute Corp.
5/15	IDS Realty (wts)
5/20	EUF Company
5/24	Cordura Corp.
5/30	Inoco-Gateway
6/12	Resorts International
6/18	Combined Properties
6/24	Quorum Industries
6/28	R-B Industries

(1) Average market price for fall calendar week pri
(2) Shares tendered + # of shares desired.
(3) Representative bid and asked price or market pri

Offering Date	Company	No. of Shares Desired(000)	% of Shares Outstanding	Total Market Value of Shares Desired(000)	Tender Price	Premium Over Pre-Tender Market Price (1)	Soliciting Dealers Fee: Actual Amount Per Share	Soliciting Dealers Fee: As a % of Tender Price	Soliciting Dealers Fee: As a % of NYSE Commission	Maximum Fee	Dealer/Manager Fee: Actual Amount Per Share	Dealer/Manager Fee: As a % of Soliciting Dealers Fee	Success of Offering?	Dealer-Manager
1/ 5	Aserace Corp.(pfd).	100	4.2%	$ 3,400	$ 34.00	17.8%(3)	$ .65	1.7%	105	None	None	None	100.5%	None
1/ 7	Henry I. Siegel	300	23.2	2,700	9.00	18.0	.25	2.8	96	None	None	None	96.8	None
1/14	MSI Industries	800	19.5	9,000	25.00	12.7	.60	2.4	122	$ 2,500	None	None	100.0	None
1/16	Questor	1,000	10.5	1,100	11.00	32.3	.30	2.7	106	None	N.A.	N.A.	120.0	P.W.J.C.
1/16	General Development	500	4.9	3,500	7.00	21.3	.30	4.3	134	$ 2,500	N.A.	N.A.	89.1	Goldman Sachs
1/23	Merle Norman Cosmetics	750	100.0	9,750	13.00	89.1	.35	2.7	110	None	.10	28.6	87.0	White, Weld & Co.
1/22	Security Plastics	250	25.5	1,750	7.00	41.7	.36	4.9	151	None	.10	28.6	45.0	Edwards & Hanly
2/ 4	Mr. Wiggs Dept. Stores	292	100.0	2,044	7.00	40.0	.35	5.0	156	None	.10	28.6	75.3	Joseph Mellon, Miller
2/11	Union Acrion	1,500	28.2	13,500	9.00	21.0	.30	3.3	115	None	N.A.	N.A.	192.2	Lehman
2/25	McCaffrey & McCall Inc.	317	55.0	2,853	9.25	43.2(3)	.25	2.7	95	None	.13	52.0	93.0	J.H. Walker; Laird Inc.
1/ 6	20th Century Fox	73,000	34.3	85,500	8.50	14.3	.35	4.1	138	None	.07	20.0	5.4	Lehman
2/13	Northwest Industries (wts.)	500	33.3	6,000	12.00	35.2(3)	.375	3.1	122	None	.15	40.0	173.0	Bear Stearns
3/12	E. Systems, Inc.	400	20.1	5,200	13.00	16.8(3)	.375	2.9	116	None	None	None	125.0	None
4/ 5	Foodarama Supermarkets	200	13.0	1,150	5.75	17.9	.20	3.3	107	None	.08	40.0	96.0	W.E. Hutton
4/ 5	Technicolor, Inc.	750	21.3	7,125	9.50	28.8	.30	3.2	112	None	.10	33.3	50.0	Goldman, Sachs
4/23	Intercontinental Diversified	2,000	14.4	6,000	3.00	54.8	.15	5.0	110	None	N.A.	N.A	127.3	Allen & Co.
5/13	Jute Corp.	600	15.9	2,925	4.875	25.8	.20	4.1	113	None	.05	25.0		Model Roland
5/15	IDS Realty (wts)	1,000	41.6	2,000	2.00	45.5(3)	.12	6.0	107	None	N.A.	N.A.		Lehman; Piper Jaffray
5/20	BLT Company	500	26.0				.45	3.3	125	None	None	None		None
5/24	Cordura Corp.	1,500	27.0	5,250	3.50	51.4	.20	5.7	136	$ 1,500	None	None		None
5/30	Ingco-Gateway	250	66.0	938	3.75	13.4	.25	6.7	168	$ 1,250	None	None		None
6/12	Resorts International	300	10.2	500	2.50	13.6	.15	.60	139	None	N.A.	N.A.		Bear Stearns
6/12	Combined Properties	468	100.0	4,680	10.00	29.0	.50	5.0	182	None	.15	30.0		Led Mason; W. Walker
6/24	Quorum Industries	206	32.0	773	3.75	97.8(3)	.25	6.7	168	None	.12	48.0		Moore & Schley, Cameron
6/28	B-B Industries	1,000	52.0	6,000	6.00	77.6	.25	4.2	125	None	.05	20.0		Dean Witter

(1) Average market price for full calendar week prior to offer
(2) Shares tendered - # of shares desired.
(3) Representative bid and asked price or market price on day prior to announcement.

Offering Date	Company Tendered For/Purchaser	No. of Shares Desired(000)	% of Shares Outstanding	Total Market Value of Shares Desired (000)	Tender Price	Premium Over Pre-Tender Market Price(1)	Actual Amount Per Share	As a % of Tender Price	As a % of NYSE Commission	Maximum Fee	Dealer/Manager Fee: Actual Amount Per Share	Dealer/Manager Fee: As a % of Soliciting Dealers Fee	Success of Offer(2)	Dealer-Manager
1/ -	Ela Nora Coal/Ethyl Corp.	1,038	100.0%	$25,950	$25.00	0%	.60	2.4%	123%	None	$ .10	16.7%	94.4%	Wheat First Securities
1/14	First National Stores/Madison Fund	250	18.2	5,750	23.00	17.6	.40	1.7	87	None	None	None	122.0	None
1/17	Reason Corp/Liquifin A.G. (5)	2,258	51.0	18,716	8.18	32.2	.35	4.3	140	None	N.A.	N.A.	70.1	Kuhn & Loeb
1/30	Buffums/David Jones Ltd.	936	100.0	16,730	17.50	100.0(6)	.38	2.2	99	None	N.A.	N.A.	100.0	Dean Witter & Co.
2/26	Far West Fin./First City Fin. Corp.	350	19.1	4,288	12.25	29.6	.25	2.0	81	None	.10	40.0	N.A.	Salomon Bros.
2/27	Funk Seeds/Ciba Geigy	3,400	100.0	57,800	17.00	30.0	.45	2.6	120	$ 5,000	N.A.	N.A.	61.8	Morgan Stanley
2/28	Wesco/Blue Chip Stamps	131	9.5	1,956	15.00	N.A.	.45	3.0	129	None	None	None	N.A.	None
3/ 1	Commercial Solvents/Becker (4)(5)	800	26.0	21,200	26.50	27.0	.35	2.1	109	None	.20	36.4	1.1	White, Weld & Co.
3/ 4	Capitol Ind./BC Ltd.	1,350	100.0	20,250	15.00	8.1	.25	2.3	101	None	.10	29.0	95.1	Blyth Eastman Dillon
3/ 6	Elco/Energy Resources (3)	732	50.0	5,117	7.00	72.3	.25	3.6	112	$ 5,000	None	None	N.A.	None
3/ -	Tovle Mfg/Mertek Inc. (3)(5)	400	33.0	4,600	11.50	15.0	.30	4.3	109	None	N.A.	N.A.	N.A.	Dominick & Dominick
3/11	Commercial Solvents/Intl Minerals	700	21.5	21,000	30.00	18.2	.60	2.2	111	None	N.A.	N.A.	164.0	Lehman Bros.
3/11	VCA/Thyssen Bornemisza(4)	1,500	41.1	29,700	16.50	34.7	.375	2.3	103	None	.125	33.3	N.A.	White, Weld & Co.
3/13	Elco/Gulf & Western	1,462	100.0	12,427	8.50	56.5	Shares voted as by Elco Corp. Shareholders				$ 5,000	None	None	None
3/14	VCA/Ethyl Corp.	4,384	100.0	81,104	18.50	51.0	.50	2.7	186	None	.10	20.0	94.0	Blyth Eastman Dillon
3/14	VCA Ptd./Ethyl Corp.	290	100.0	5,700	19.00	22.6	.50	2.6	125	None	.10	20.0	83.0	Blyth Eastman Dillon
3/22	H.L. Allen/United Industrial	296	100.0	1,924	6.50	36.8(6)	.25	3.8	117	None	None	None	N.A.	None
4/ 9	Scurry Rainbow Oil/Home Oil Ltd.	900	35.0	70,605	27.00	14.6	.70	2.6	137	$ 2,000	N.A.	N.A.	200.0	Lehman Bros.;Wood Dunn
4/12	Foster Grant/Utd. Brands	200	9.0	6,800	34.00	13.4	.50	1.5	36	$ 2,500	N.A.	N.A.	175.0	Goldman Sachs; F.W.J.C.
4/15	Funding Systems/Equisark	535	100.0	1,605	3.00	32.2	.80	6.7	147	None	N.A.	N.A.	N.A.	W.T. Securities
4/24	Hammond Corp/G.L. Corp.	500	15.0	5,000	10.00	30.1	.25	2.5	91	None	N.A.	N.A.	22.0	Salomon Bros.
5/ 6	Golconda Corp/Cerro Corp.	1,600	100.0	134,000	8.38	9.8	.35	4.2	139	None	.12	34.3		Smith Barney; White, Weld
5/ 6	Golconda Corp/Cerro Corp.	383	100.0	6,224	16.25	18.2	.50	3.1	137	None	.16	32.0		Smith Barney; White, Weld
5/ 8	Uris Bldg. Corp/Natl Kinney	3,600	100.0	54,000	15.00	4.4	None	None	None	None	None	None	97.2	None
5/ 8	Uris Bldg. Wts/ Natl Kinney	310	100.0	6,006	19.38	4.7	None	None	None	None	None	None	96.7	None
6/ 7	Airwick Industries/Ciba Geigy	3,478	100.0	43,475	12.50	30.0	.36	2.9	116	None	.12	33.3	96.0	White, Weld & Co.
6/ 7	Brown Company/Gulf & Western	1,000	53.2	12,000	12.00	17.1	.25	2.1	82	None	N.A.	N.A.		Kidder Peabody
6/ 7	Latrobe Steel/Eastmet Corp.(4)(5)	660	52.0	7,260	11.00	74.3	.40	3.6	138	None	.10	25.0	23.8	Alex Brown
6/ 7	Madison Square Garden/Gulf's Western	1,000	29.1	6,750	6.75	36.7	.15	2.2	68	None	N.A.	N.A.		Bear Stearn
6/12	Great Plains Dev. Co. of Canada/Burmah Oil	1,148	100.0	45,920	40.00	44.1	.65	1.6	102	$ 3,000	N.A.	N.A.		Kidder Peabody; Wood Gundy
6/20	National Union Electric/Electrolum	2,040	100.0	57,120	28.00	34.5	.40	1.4	89	$ 1,000	.20	50.0	90.9	White, Weld; Warburg Paribas
6/24	Chloride Conmrex/Chloride Inc.	564	100.0	5,640	10.00	33.8	.30	3.0	109	$ 1,000	.15	50.0		Goldman Sachs
6/27	Baskins & Robins/J.Lyons Ltd	405	100.0	7,105	17.50		None	None	None	None	None	None		Kuhn & Loeb
6/28	Commercial Solvents/Intl Minerals	300	9.8	9,000	30.00	24.0	.60	2.0	111	None	.17	28.3		Lehman Bros.

DEFENDANTS' EXHIBIT D

Comparison of Debentures

	We
Traded	AS
Class	Su
Rating (Moody's)	
Principal Amount (000)	$1
Coupon	10
Term	10
Average Life	4.7
Annual Sinkihg Fund	197
Redemption	10% pri amo use pur ben eit mar via fun
Current Price (9/13)	$75
Yield to Maturity	14.7
EBIT Coverage of Fixed Charges	3.0

[1] Assuming comple

[2] Assuming averag

lls, Rich, Greene	Argent	Caesar's World	Gulf & Western	MGM	Reliance Group	Tandy Corp.	Teledyne	Zero Manufacturing
E	ASE	OTC	NYSE	OTC	NYSE	NYSE	NYSE	OTC
bordinated	Subordinated	Subordinated	Senior	Subordinated	Subordinated	Subordinated	Subordinated	Senior
--	--	--	B	--	--	--	--	--
1,240 [1]	NA	2,822	$52,325	$24,150	$27,510	$29,000	$68,000	$1,790
	10%	12 1/2%	7%	10%	9 7/8%	10%	10%	10%
Yrs.	10 Yrs.	16 Yrs.	30 Yrs.	20 Yrs.	25 Yrs.	20 Yrs.	30 Yrs.	15 Yrs.
Yrs.[2]	6.25 Yrs.	14.2 Yrs.	30 Yrs.	14.0 Yrs.	18.0 Yrs.	20 Yrs.	27.2 Yrs.	12.8 Yrs.
5-1984	1975-79 5%/Yr. 1980-83 10%/Yr.	1982-90 6.25%/Yr.	None	1979-94 5%/Yr.	1985-99 6.66%/Yr.	None	1994-03 5%/Yr.	1984-89 15%/Yr.
original ncipal unt to be d to re- chase de- tures on her open ket or sinking d.	Anytime at Argent's option. Initially at 105% of par plus accrued interest - declining ratably to 103% plus accrued interest.	Anytime at Caeser's option. Initially at 105% of par plus accrued interest - declining ratably to 100% plus accrued interest.	Anytime at Gulf & Western's option at par plus accrued interest.	Anytime at MGM's option. Initially at 103.5% of par plus accrued interest - declining ratably to 100% plus accrued interest.	Anytime at Reliance's option. Initially at 105.8% of par plus accrued interest - declining ratably to 100% plus accrued interest.	Anytime at Tandy's option. Initially at 105% of par plus accrued interest - declining ratably to 100% plus accrued interest.	Anytime at Teledyne's option at par plus accrued interest.	Anytime at Zero's option. Initially at 105% of par plus accrued interest - declining ratably to 100% plus accrued interest.
2	$61 1/2	$53 (B) (When Issued)	$47 1/4	N.A. (When Issued)	$57 1/2	$68 1/2	$37 1/2	$53 (B)
55%	18.9%	24.1	15.1%	N.A.	17.4%	15.0%	26.6%	19.9%
	N.A.	3.9	2.8	1.8	2.6	4.9	6.2	2.7

te exchange.

e price of $75.

700a

raded

urrent Price (9/13)

rice Range
74
73

t Income
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72

rice Earnings Ratio (LTM)
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ook Value (000)
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72

urrent Average Shares Outstandi

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Date

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Senior
Subordinated
Total
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areholder Equity
tal Capitalization

DEFENDANTS' EXHIBIT E

Comparison of Advertising Agencies

	Greene	[illegible]	Doyle Dane Bernbach	Grey Adv.	Inter-public	J. Walter Thompson	Harper & Steers	Ogilvy Mather
	NYSE	OTC	OTC	OTC	NYSE	NYSE	OTC	OTC
	$7 5/8	$11 1/8(B)	$7 1/4(B)	$6 3/4(B)	$8 1/2	$6 1/8	$4 3/4(B)	$14(B)
	9 5/8 - 3 1/2 21 1/8 - 7 1/8	14 3/8 - 10 18 1/4 - 10 3/4	11 1/2 - 6 3/4 24 - 7 1/2	8 3/8 - 6 1/4 17 1/4 - 7	13 - 8 1/4 25 3/8 - 9 3/8	12 - 6 1/8 24 3/4 - 8 1/4	7 1/2 - 4 26 1/4 - 5	17 1/4 - 12 1/2 33 1/2 - 13
	3,375 3,009	5,526 4,885	3,628 4,109	2,473 2,387	6,838 6,268	4,261 5,532	2,004 1,777	4,967 4,426
	3.7x $ 0.68 8.9% $ 15,471 $ 9.48 0.80	5.1x $ 1.80 16.1% $22,842 $9.09 1.22	3.8x $ 0.96 13.2% $18,316 $9.85 0.74	3.3x $ 0.60 8.9% $15,860 $12.55 0.54	3.4x $1.00 11.8% $33,581 $14.48 0.59	13.9x $1.00 16.3% $51,954 $19.80 0.31	2.6x $0.54 11.4% $7,791 $8.68 0.55	85.0x $0.90 6.4% $24,753 $10.56 1.33
ordinary Items)	$ 2.08 2.08 1.90	$ 2.17 2.10 2.01	$1.91 1.95 2.06	$2.03 1.96 1.92	$2.47 2.74 2.38	$0.44 1.62 2.05	$1.84 2.18 1.95	$2.82 2.73 2.43
ng (000)	1,632	2,513	1,796	1,255	2,319	2,624	918	1,807
	$ 12,444	$ 27,957	$ 13,021	$ 8,471	$19,711	$16,072	$4,360	$25,298
	10/31/73	12/31/73	10/31/73	12/31/73	12/31/73	12/31/73	12/31/73	12/31/73
	$ 407 -- $ 407 -- 15,467 $ 15,874	$ 3,939 -- $ 3,939 1,200 21,074 $ 26,213	$ 1,817 -- $ 1,817 54 22,842 $ 24,713	$ 517 365 $ 882 -- 15,860 $ 16,742	$ 6,361 130 $ 6,491 1,642 37,613 $45,746	$ 5,064 -- $ 5,064 -- 51,954 $57,018	-- -- -- $ 752 7,971 $8,723	$ 1,061 1,020 $ 2,081 550 24,753 $27,384

DEFENDANTS' EXHIBIT F

Prices of Common Stocks of Advertising Companies (8/30-10/18)

Week Ended	WRG
Aug. 30	$5 3/4
Sept. 6	7 5/8
13	7 1/2
20	7 3/4
27	7 5/8
Oct. 4	7 3/4
11	7 5/8
18	7 3/4
$ Increase (Decrease)	2
% Increase (Decrease)	35

11/20 8 3/8

White, Weld & Co. Incor
10/22/74

PRICES OF COMMON
STOCKS OF ADVERTISING COMPANIES
(8/30 - 10/18)

Week Ended	WRG	BBDO Int'l	Doyle, Dane	Grey Adv.	Inter-public	JWT	Needham, Harper, Steers	Oglivey, Mather	Index
Aug. 30	$5 3/4	$12 1/8	$7	$6 1/2	$9	$7 1/8	$4 1/4	$12 1/2	100
Sept. 6	7 5/8	12	7 3/8	6 1/2	9	6 3/4	4 1/2	12 1/2	103
13	7 1/2	10 3/8	6 3/4	6 1/4	8 1/2	6 3/8	4 1/2	12	97
20	7 3/4	10 3/4	6 3/4	6 1/4	9	6 1/8	4 3/4	13	100
27	7 5/8	10 1/4	6 1/4	5 3/4	8 3/4	6 3/8	3 7/8	11 1/4	94
Oct. 4	7 3/4	11 3/8	5 1/2	5 3/4	8 3/4	6 5/8	4	10 1/2	94
11	7 5/8	12 1/4	6 3/4	5 7/8	9 3/4	7	4 1/4	10 1/2	100
18	7 3/4	11 3/8	6 1/4	6 3/8	11	7	4 7/8	12 1/4	104
$ Increase (Decrease)	2	(3/4)	(3/4)	(1/8)	2	(1/8)	5/8	(1/4)	
% Increase (Decrease)	35	(6)	(11)	(2)	22%	(2)	15%	(2%)	
11/20	8 3/8	11 5/8	6 1/4	5 3/4	6 1/4	6 1/8	4	10 1/4	96

White, Weld & Co. Incorporated
10/22/74

7048

DEFENDANTS' EXHIBIT G

Closing Prices of Advertising Agencies on Dates of WRG's Highest and Lowest Closing Prices

G

15

706a

CLOSING PRICES OF ADVERTISING AGENCIES
ON DATES OF WRG's HIGHEST AND LOWEST CLOSING PRICES

	Mon. 1/31/72	Wed. 9/5/74
WRG	27 7/8	5 1/2
Grey	14 7/8 (B)	6 1/2 (B)
OM	43 1/2 (B)	12 1/2 (B)
BBDO	(Public 10/24/73)	11 1/2 (B)
D Dane	25 1/2 (B)	6 1/2 (B)
Interpublic	26 5/8 (B)	8 1/2 (B)
JWT	41 3/4	6 7/8
NHS	(Public 4/13/72)	4 1/4 (B)
DJII	902.17	648.00
S&P 500	103.94	68.72
NYSE Composite	57.71	35.93
NASDAQ OTC Composite	118.87	58.95

Court's Exhibits ("CX") in Evidence:

COURT'S EXHIBIT 1

WRG Exchange Offer Statistical Report

Court's Exhibit 1

Messrs: Duffee, Hallingby, Hutchinson, Lee, Lewis, Little, MacEwan and Paul

EXCHANGE OFFER
FOR
1,405,008 Shares
WELLS, RICH, GREENE
Common Stock

DATE	SHARES TENDERED		% OF TOTAL SHARES TO BE EXCHANGED
	ACTUAL	CUMULATIVE	
11/12	300	300	.02 %
11/13	6,965	7,265	.51 %
11/14	2,337	9,602	.68 %
11/15	32,903	42,505	3.03%
11/18	8,980	51,485	3.66%
11/19	103,300	154,785	11.0

COURT'S EXHIBIT 2

White, Weld & Co., Incorporated Confidential Memorandum Regarding WRG Exchange Offer

PLAINTIFF

710a Court's Exhibit 2 ~~EA~~

CONFIDENTIAL - NOT TO BE DISTRIBUTED TO CUSTOMERS UNDER ANY CIRCUMSTANCES. CUSTOMERS SHOULD BE ADVISED TO READ THE PROSPECTUS

WELLS, RICH, GREENE, INC. (WRG) EXCHANGE OFFER

I. SUMMARY OF THE OFFER

(1) Dealer-Manager: White, Weld is Dealer-Manager

(2) Terms: $3 Cash + $8 Principal Amount of 10% Debentures due 11/1/84 in exchange for each Common Share tendered

(3) Timing: Offer Announced by WRG: 9/4/74

Registration Statement Filed with S.E.C.: 10/3/74
Registration Statement Effective (OFFER BEGINS): 11/4/74
Offer Expires: at 5:00 EST on 11/25/74 unless extended.
Withdrawal Date: 11/12/74
Grace Period for late or incomplete tenders; Ends 12/5/74
(8 business days after expiration date)

(4) Size of Offer: OFFER IS FOR ANY AND ALL OF THE 1,405,008 SHARES AVAILABLE FOR PARTICIPATION IN THE OFFER (the other 226,850 shares are owned by members of WRG's Board of Directors who will not participate).

(5) Soliciting Dealer's Compensation: $.375 per share. NO MAXIMUM. Dealers may tender for their own account and receive soliciting dealer's fees.

II. PURPOSE OF THE OFFER

WRG's stated purpose of this offer is to revert to a privately-held company, as it was prior to October 31, 1968, for the following reasons:

(1) Employee Incentive: In 1968 WRG believed that the existence of a public market for its stock would make its various incentive plans more attractive to its employees. However, the poor performance of the stock has put WRG at a disadvantage in competing for top people with other advertising agencies whose incentive plans are based on buying and selling stock privately at book value.

(2) Depressed market price of the stock:

Initial Public Offering Price: $17.50 (10/31/68)
Price of Second Public Offering: $21.75 (4/19/71)

Annual Price Ranges Since 1969

1969:	8 3/4 - 18 1/4
1970:	5 - 17 3/8
1971:	15 1/4 - 25 7/8
1972:	16 3/4 - 27 7/8
1973:	7 1/8 - 21 1/8
1974 (through 9/3/74):	5 1/2 - 9 5/8

On September 3, 1974 (last full trading day prior to announcement of this offer), WRG closed at $5.50 on the N.Y.S.E. On the day prior to the effective date WRG closed at 8 1/8.

(3) Light N.Y.S.E. Trading Volume in the Stock: The average daily trading volume of the stock has steadily declined over the past several years, and it is the opinion of WRG that the current thin market does not provide the advantages of a liquid, active market that the Company was seeking when it originally went public. The decline in the approximate average daily trading volume can be seen in the table below.

	Approximate Average Daily Volume
1971	7,774 shares
1972	6,127
1973	2,584
1974	1,773

These factors have led WRG's Board of Directors to conclude that a public market is not providing the benefits to WRG, its employees, and its stockholders that were originally anticipated.

DESCRIPTION OF DEBENTURES

(1) Coupon: 10%

(2) Redeemable at any time at par.

(3) Sinking Fund: One of the most meaningful and important features of the Debentures is a unique Sinking Fund which, starting in the first year, is designed to provide for the rapid retirement of the Debentures. Whereas a conventional sinking fund requires annual payments based on the principal amount of the bonds, this Sinking Fund calls for WRG to spend 10% of the original principal amount of Debentures in cash each year regardless of what price is paid to retire Debentures. Refer customer to Page 5 of the Prospectus.

For instance, if the initial principal amount of Debentures outstanding is $10 million, WRG must spend $1 million each year in retiring Debentures. If the Debentures sell in the open market at an average price of 75%, WRG would retire $1,333,000 of Debentures per year (assuming it is able to purchase such amount in the

open market). Again assuming the Debentures sell at an average price of 75%, they would have an average life of 4.7 years, a yield to maturity of 18.3%, and a current yield of 13.3%. Because of the expected short average life of the Debentures brought about by this Sinking Fund, we believe that if all other aspects were equal WRG's Debentures would sell at a higher price than similar quality, but longer-term debentures.

(4) Listing of the Debentures on the American Stock Exchange will be applied for.

(5) Denomination of Debentures: Initially in denominations of $1,000, $500, $100 and in amounts of less than $100.

V. POINTS TO BE CONSIDERED BY WRG STOCKHOLDERS - These points must not be emphasized in an attempt to have customers accept the exchange offer.

(1) Possible consequences which may result from this Offer:

(a) Possible delisting by N.Y.S.E. if either the total number of beneficial holders of 100 shares or more falls below 1,200, or the number of publicly held shares falls below 600,000.

(b) Possible deregistration with S.E.C. under the Exchange Act of 1934 if the number of holders of record is reduced to fewer than 300.

(c) Possible retirement of untendered publicly held shares could be accomplished by merging WRG into another corporation. Such a merger would require the approval of 2/3 of the outstanding stock. In such a transaction any dissenting stockholders could exercise their appraisal rights.

(d) Possible decline in market price as trading volume becomes significantly reduced.

(2) Ability to liquidate holdings: Through this offer stockholders may liquidate large holdings immediately at prices greater than previously were available, an ability which previously might have been limited because of recent light trading volume and possible future illiquidity as a result of this offer.

(3) Stockholders' Investment Objectives: Stockholders will receive $3 cash exchange plus $8 principal amount of 10% Debentures, which will provide the following estimated level of income for each share exchanged: The following table illustrates the annual cash returns assuming a 10% return or the cash portion of the exchange package:

	Exchange Offer			
	Debentures	Cash	Total	Common Stock
Income	.80	.30	$1.10	$.68
Current Yield	10% (at par) (Assumed)	10%	10%	(a)

(a) Using closing N.Y.S.E. price of 8 1/8 on day prior to effective date.

It is anticipated that the Debentures will trade at approximately 75% of par, thus decreasing the value of the Debentures to $6 but increasing the current yield on the Debentures to approximately 13.3%.
A shareholder is giving up his portion of ownership by tendering and accepting cash plus a fixed obligation to pay by WRG, a security which ranks senior to the common stock in the event of liquidation or involvency.

(4) Tax Considerations: Page 11 of the Prospectus describes the Federal Income Tax consequences of the Offer. Each stockholder should consult his tax advisor as to how the offer affects him.

Stockholders should be given the opportunity to review the documents sent to them by WRG. These documents include a Prospectus.

Branch offices have been sent stockholder cards to facilitate solicitation of tenders. We may use the stockholder list, as represented by the cards, to prospect for new accounts.

The following information should be wired to Equity Underwriting Sales no later than 12/18/74:

The Holder Will:	No. of Holders	No. of Shares
Tender		
Sell		
Continue to Hold		
No response		
No contact		

Salesmen should be sure that his or her name and production number appear in the Solicitation Box in the Letter of Transmittal along with the name of White, Weld.

D.F. King has been retained to solicit acceptances; however, D.F. King is being paid a flat fee and cannot collect the soliciting dealer's fee. The fact that any particular shareholder has already been contacted by D.F. King does not preclude White, Weld from receiving the soliciting dealer's fee in connection with any shares tendered by such shareholder.

Because WRG common stock is restricted, the Legal and Compliance Department must approve all unsolicited sell orders and the order tickets must be marked "unsold."

A conference call to discuss this offer in further detail will be held at 4:15 P.M. on 11/4/74.

Questions related to this offer may be directed to Brian Little (2341), Steve Hutchinson (2392) and the undersigned.

Johathan Stern
Ext. 2613

Memo Endorsement and Order of Hon. Robert L. Carter
Dated November 25, 1974

Show Cause and concluded. A preliminary injunction will be issued against defendants and will go into effect at 5:00 P.M today Nov 25, 1974. No bond is to be posted. So ORDERED:

So ordered

Robert L. Carter
U.S.D.J.

/

U.S. DISTRICT COURT
FILED
NOV 26 1974
S.D. OF N.Y.

MICROFILM
NOV 26 1974

Temporary Restraining Order of Hon. Robert L. Carter
Dated November 25, 1974

S. DISTRICT CO
FILED
NOV. 25 1974
S. D. OF N. Y.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ALBERT KAUFMANN,	:	
Plaintiff,	:	74 Civ. 5081
-against-	:	(RLC)
MARY WELLS LAWRENCE, et al.,	:	ORDER
Defendants.	:	

Plaintiff Albert Kaufmann having moved this Court for a temporary restraining order pending the determination by this Court as to Plaintiff's motion for a preliminary injunction, it is

ORDERED, that defendants, pending this Court's determination with respect to Plaintiff's motion for a preliminary injunction, are hereby restrained from consummating the Exchange Offer through furnishing or delivering or causing to be furnished or delivered, to stockholders of Wells, Rich, Greene, Inc. ("WRG") any 10% Subordinated Sinking Fund Debentures due November 1, 1984 of WRG or any cash or checks in exchange for shares of WRG common stock tendered pursuant to WRG's Exchange Offer made by Prospectus dated November 4, 1974, and from cancelling or causing to be cancelled any stock certificates for tendered shares, provided, however, that nothing in this Order shall restrain defendants from accepting or causing the acceptance of the tender of shares in accordance

MICROFILM

with the terms of the Exchange Offer, and provided further that nothing herein shall restrain defendants from extending the expiration date of WRG's Exchange Offer, all of the foregoing being subject to the further order of this Court.

Dated: New York, New York
November 25, 1974

Robert L. Carter

United States District Judge

Opinion and Order Appealed From, of Hon. Robert L. Carter, Dated December 5, 1974

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- x

ALBERT KAUFMANN, :

Plaintiffs, :

- against - : 74 Civ. 5081

MARY WELLS LAWRENCE, CHARLES MOSS, :
RICHARD T. O'REILLY, JOHN V. BURNS,
FRANK G. COLNAR, FREDERICK L. JACOBS, :
BARRY E. LOUGHRANE, MARTIN STERN,
STANLEY G. DRAGOTI, WARREN J. KRATKY, : #41537
ARNOLD M. GRANT, TROY V. POST,
EMILIO PUCCI, CATHERINE GIBSON, :
E. DONALD CHALLIS and WELLS, RICH,
GREENE, INC., :

Defendants. :

- x

A P P E A R A N C E S:

Messrs. Nemser & Nemser
~~30 East 42nd Street~~ 845 THIRD AVENUE
New York, New York ~~10017~~ 10022
by: Stanley Nemser, Esq.
Norman S. Nemser, Esq.
Peter Wang, Esq.
Attorneys for Plaintiff

Messrs. Hughes, Hubbard & Reed
One Wall Street
New York, New York 10005
by: Robert J. Sisk, Esq.
Orville Schell, Esq.
Amalya Kearse, Esq.
Attorneys for Defendants

CARTER, District Judge

OPINION

I

This case involves [illegible]oversy as to the legal validity under federal securities laws of an exchange offer made by the defendant, Wells, Rich, Greene, Inc. (WRG) to holders of its common stock. Plaintiff, a holder of 100 shares, brings this action as a class action on behalf of himself and all other holders of WRG common stock, excluding such holders who are directors and officers and the members of their immediate family. Plaintiff is seeking to enjoin consummation of the exchange offer, to require withdrawal of the offer and a return of all shares of common stock tendered thereunder. Plaintiff invokes as the bases for his claims Sections 10(b) and 14(e) (15 U.S.C. §§78j(b) and 78(e)) of the Securities Exchange Act of 1934 and Rule 10b-5 (17 C.F.R. 240.10b-5) of the Securities Exchange Commission and common law principles. Jurisdiction exists pursuant to Section 27 (15 U.S.C.§78aa) of the Securities Exchange Act.

As is usual in matters of this kind, the action was brought at the eleventh hour, and pressure for hurried determination was heavy.

The complaint was filed on Tuesday, November 19, 1974. Plaintiff's motion for preliminary injunction was filed on Thursday, November 21, 1974, and an evidentiary hearing was held on the motion on Monday, November 25, 1974.

At the close of the evidentiary hearing, since the exchange offer was scheduled to expire at 5 p.m. on that day, at which time the disputed transaction was to have been fully consummated, an order was issued restraining the completion and conclusion of the matter pending determination of the pending motion for preliminary injunctive relief.

II

WRG, a full-service advertising agency, is a New York corporation with principal offices in New York City. It proposes advertising programs for its clients, writes and produces television and radio commercials, contracts for advertising terms and space, and arranges for distribution of advertising materials. The individual defendants are directors and officers of the company. Defendant Mary Wells Lawrence was the founder of the company and is its chief executive officer.

The company was organized in 1966. Between approximately April, 1966, and June, 1968, the officers and directors acquired 1,450,600 shares of common stock of the company at an aggregate cost to them of $548,600. Thereafter, in 1968, a public offering of WRG common stock was made for the first time, consisting of a total of 409,900 shares at $17.50 per share. Of these 409,900 shares offered, 359,900 shares belonged to officers and directors of the company. In 1968, through this offering, the public invested $7,173,250 in the company. The officers and directors netted some $5,866,370 from this investment of funds from the public. Defendant Lawrence, who had bought founders' shares in 1966 for $30,100, realized some $1,266,575 as a result of this 1968 sale of stock to the public. [1] As of August 31, 1974, the issuance of 5,000,000 shares of WRG common stock was authorized; 1,631,588 shares had been issued, of which 265,052 shares were held by WRG officers, directors and employees

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1. This net figure is not all profit. It is the amount received by the individuals after deductions for commissions and other costs involved in the offering.

WRG stock was listed and traded on the American Stock Exchange beginning in 1970, and in connection with the second public offering in 1971, the stock was transferred for listing and trading to the New York Stock Exchange. In 1971, some 333,739 shares, all owned by WRG directors, officers and employees, were sold to the public at $21.75 per share. The public invested some $7,258,823.25 in the company in the purchase of WRG shares in the 1971 offering. The aggregate net amount realized from this second public sale was $6,841,649, of which defendant Lawrence received $2,272,425.

The corporation has prospered. Its gross billings grew from $77 million in the fiscal year ended October 31, 1969, to $115 million in fiscal year ended October 31, 1973. Earnings per share rose from $1.02 in fiscal 1969 to $2.04 in the fiscal year ended October 31, 1973. The company was described by plaintiff's expert at the November 25th hearing, as having developed a fine reputation, being noted for creativity in advertising, the possession of excellent business management and first-rate clients. Its common stock rose to a high of 27-7/8 in 1972, but was selling at 5-1/2 immediately prior to the exchange offer which is the subject of this controversy.

The idea of buying back the public stock was planted in the winter of 1973. Apparently what helped further the idea of removing the company from the public realm was an abortive attempt to buy out another company. These were sensitive negotiations, and we are advised that because the nature of the negotiations had to be fully disclosed to the SEC, they had to be terminated.

The decision to pursue going "private" further was made in August, 1974. Just prior to the September 4, 1974, WRG Board meeting, the advice of Paul Hallingby, Jr., President and chief Executive Officer of White, Weld & Co., Inc., was sought about the wisdom, fairness and advisability of the proposed exchange offer. White, Weld & Co., Inc. had acted as managing underwriter for the 1968 and 1971 public offerings, and since 1968 had been WRG's investment banking advisor and consultant. Hallingby in a letter dated September 4, 1974, advised Mrs. Lawrence that the exchange offer would be attractive and that the offering price of $3 in cash and $8 principal amount of 10% subordinated sinking fund debentures constituted fair value for the company's stock in the light of current market conditions. The transaction as finally approved by the Board at the

September 4, 1974, meeting and offered to the public, was an offer to purchase from holders of its common stock, up to 1,405,008 shares of common stock, representing all of the issued outstanding shares except approximately 226,850 shares owned by members of the Board of Directors. The Board had agreed not to participate in this exchange offer. A holder would receive for each share tendered $3 in cash and $8 principal amount of a newly created 10% subordinated sinking fund debenture maturing on November 1, 1984, and bearing interest at 10% per annum. The debentures are unsecured obligations of the company limited to an aggregate principal amount of $11,240,064. Payment of the principal and interest is subordinated to all prior debt, and payment in any case is contingent upon the company being solvent and having a surplus at the time of payment. The debentures are redeemable at WRG's option. WRG is to pay into the sinking fund, on or before November 1, of each year from 1975 to 1983 in cash 10% of the aggregate principal amount of the originally outstanding debentures. WRG has the right to reduce its cash payments to the sinking fund by filing debentures with the Trustee which the company had acquired. The package is estimated to have

a current value of $9 per share, but is actually selling at roughly a 30% discount. White, Weld & Co., Inc. has agreed to guarantee an over-the-counter market for any shares not tendered, and at the November 25th hearing, one of its officers, Brian Little, testified that a market could be made with as few as 50,000 shares.

The offer expired at 5 p.m. on November 25, and all tenders became irrevocable after November 12th. White, Weld & Co. is dealer-manager of the offer and Chase Manhattan Bank is the exchange agent. The Prospectus bears the statement Participation in the Exchange Offer is completely voluntary and the Company makes no recommendations with respect thereto (italics in the original). The Prospectus further states that neither the company nor the Board is making any recommendation as to whether the offer should be accepted or rejected.

The offer was first announced on September 4, at the close of trading on the New York Stock Exchange. The announcement was in the form of a press release.

III

This case involves what is apparently a growing trend in the business community--a public company going "private." Plaintiff alleges violations of Sections 10(b) and 14(e) of the Securities Exchange Act of 1934 in that the Prospectus setting forth the terms of the exchange offer contains false and misleading statements, misrepresentations and material omissions. It is further contended that the exchange offer is in fact a scheme and device to defraud. The §§10(b) and 14(e) violations alleged are the absence of any reference in the Prospectus to the White, Weld & Co. letter of September 4, 1974, advising WRG that the exchange offer proposed was fair and attractive in business terms; the absence of any mention in the Prospectus that the 10% sinking fund debentures and purchase fund may be doubled in any year; the failure of the Prospectus to state that Lawrence and other directors and employees had bought WRG shares in 1974 prior to the exchange offer; and the failure to reveal the price at which defendant Lawrence and the other directors had bought WRG shares prior to the first public offering.

A misrepresentation or omission within the meaning of the federal securities laws invoked in this case is one that a reasonable man would consider important to his decision to tender or not tender his shares, see, List v. Fashion Park, Inc., 340 F. 2d 457, 462 (2d Cir.), cert. denied, 382 U.S. 811 (1965); Heit v. Weitzen, 402 F. 2d 909 (2d Cir. 1968); Chris-Craft Industries, Inc. v. Piper Aircraft Corp., 480 F. 2d 341, 362 (2d Cir. 1973); Gerstle v. Gamble-Skogmo, Inc., 478 F. 2d 1281 (2d Cir. 1974), or might have been considered important to that determination, see Mills v. Electric Auto-Lite Co., 396 U.S. 375 (1970). For a thorough discussion of the two applicable standards, see this court's opinion (Cannella, J.) in Broder v. Dane, et al., 74 Civ. 4585, dated November 21, 1974.

In order for a party seeking a preliminary injunction to prevail, he must either show the likelihood of success on the merits and irreparable injury, or he must raise sufficiently serious questions going to the merits to make them a fair ground for litigation and establish that the balance of hardship tips decidedly in his direction. See, e.g., Gulf & Western Industries, Inc. v. Great Atlantic & Pacific Tea Co., Inc., 476 F. 2d 687 (2d Cir. 1974).

Applying the first standard, the omissions and misrepresentations relied upon cannot be considered material under either the "would" or "might" standard. The omission of the reference to the White, Weld & Co. "go ahead" opinion letter of September 4, 1974, to the right to double the amount of the cash contribution to the sinking fund debenture in any one year and to the cost at which Mrs. Lawrence and the other directors originally purchased their shares are obviously make-weight arguments on the issue of §§10(b) and 14(e) materiality.

The failure of the Prospectus to specify the number of shares recently bought by Mrs. Lawrence and other directors and employees in 1974 prior to the exchange offer does not bring this case within the parameters of Broder v. Dane. There a large block of stock was bought by defendant Stern from members of the Dane family at premium prices, far in excess of the prevailing market price. Failure to disclose this fact was considered a material violation within the reach of Section 10(b). Here Mrs. Lawrence in percentage terms, bought a small number of shares, and the shares were purchased at prevailing market prices.

Moreover, while the 1974 purchases were not specified, the aggregate total of shares held by the directors and officers as of September 1, 1974, is set out in the Prospectus.

On this record, without determining what proof may be presented at trial to bolster the case, plaintiff has clearly not established the likelihood of success at trial.

The "serious question" test, see Gulf & Western Industries, Inc., supra, however, is undoubtedly more appropriately applicable to this case. The issue raised is undenably serious and troublesome. The public has invested some $14 million in the company. The decision to buy out the public during the current depressed market will enable the public shares to be repossessed at a fraction of the original cost to the public shareholders. Moreover, if the exchange offer is successful, i.e., if the number of shareholders is reduced to fewer than 300, the company will be able to operate as a private corporation free from public regulation and oversight.

A member of the Securities and Exchange Commission, A. A. Sommer, Jr., has manifested concern about the trend of public companies to go "private," and is quoted as suggesting that "under well established

legal principles such conduct may also be unlawful." (Wall Street Journal, November 15, 1974). The statement places stress on the benefit to, and large profits realized by, insiders when a company goes "private" because the stock market's depressed state enables the shares, previously purchased at high prices, to be repurchased at bargain rates.

This is really the basic issue and principle which plaintiff seeks to litigate. Plaintiff stresses the small capital investment of the directors prior to the 1968 offering, and the subsequent huge gains realized in the sale of their stock to the public in 1968 and 1971. Plaintiff contends that the exchange offer is an attempt to squeeze out the public and the package does not give the public fair value. At the hearing, plaintiff's expert testified that the appropriate way to measure true value was by what he called "intrinsic value"; that figure is arrived at by looking at the history of the price-earnings ratios of a company. Using that formula, he placed the current value of WRG shares at a high of $22 and a low of $19 - $20. Defendants are, of course, using current market value to measure the fairness of the exchange offer, and that certainly is regarded as a fair indication of value.

See Application of Deutschmann, 281 A.D. 14, 116 N.Y.S. 2d 578 (1st Dept. 1952). Whether the offer is fair or unfair or a good or a bad transaction, however, does not raise a federal question. See Lewis v. Siegel, CCH Fed. Sec.L.Rep.¶93,992 (S.D.N.Y., May 18, 1973); Armour and Company v. General Host Corporation, 296 F. Supp. 470 (S.D.N.Y. 1969).

Plaintiff alleges that the statement in the Prospectus to the effect that the shareholders' response to the exchange offer is voluntary is a misrepresentation. He contends that the proposal is really intended as an immediate or ultimate squeeze-out of the public. He may well be right, but I do not think that helps his cause. Obviously, defendants are seeking to capitalize on the current economic downtrend and are offering their shareholders a package which is attractive only because of unfavorable economic conditions. In fact, the package is saleable only because of those conditions. The shareholder may tender his stock and sell the debentures at a discount in order to get out while he can. He may, however, gamble and refuse to tender, or tender and indicate his faith in WRG's future prosperity by holding the debentures until maturity. The Prospectus gives him all the relevant facts and he can act on the basis of full information.

This is not the case of any hidden or secret action by an outside group to take over control of the company. Nor does there appear to be any sizeable group of shareholders opposed to the exchange proposal. Indeed, if such opposition does exist, defendants' plans to go "private" will be frustrated by a sizeable number of shareholders refusing to tender their shares.

While Sections 10(b) and 14(e) must be read flexibly, and not technically or restrictively, see Superintendent of Insurance of the State of New York v. Bankers Life and Casualty Company, 404 U.S. 6 (1971); accord, Drachman v. Harvey, 453 F. 2d 722 (2d Cir. 1971), there is nothing invalid per se in a corporate effort to free itself from federal regulations, provided the means and the methods used to effectuate that objective are allowable under the law. Nor has the federal securities law placed profit-making or shrewd business tactics designed to benefit insiders, without more, beyond the pale. Those laws in respect of their design and interpretive reach, as I understand them, including the provisions relied on here, are satisfied if a full and fair disclosure is made, so that the decision of the holders of WRG stock to accept or refuse the exchange offer can be said to have been freely based upon adequate

information. See Popkin v. Bishop, 464 F. 2d 714, 721 (2d Cir. 1971).

A public company going "private" may indeed raise serious questions concerning protection of the public interest. There is, however, no foundation on the record before me from which the ramifications of that interest within the reach of the federal securities laws might conceivably be explored. Thus plaintiff has failed to meet the alternative test pursuant to which a preliminary injunction might appropriately be granted.

Finally, it should be added that even if I am in error as to the reach of the federal securities laws, the plaintiff and the class he represents have an adequate remedy at law. Monetary damages will suffice to make them whole. See Tanzer Economic Associates v. Haynie, (S.D.N.Y.) 74 Civ. 4857, decided November 20, 1974 (Frankel, J.).

For these reasons, the motion for preliminary injunction is denied, and the restraining order heretofore entered is vacated. It is so ordered.

Dated: New York, New York
December 5, 1974

Robert L. Carter
ROBERT L. CARTER
U.S.D.J.

Notice of Appeal Dated December 6, 1974

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

ALBERT KAUFMANN,

Plaintiff,

-against-

MARY WELLS LAWRENCE, CHARLES MOSS, RICHARD T. O'REILLY, JOHN V. BURNS, FRANK G. COLNAR, FREDERICK L. JACOBS, BARRY E. LOUGHRANE, MARTIN STERN, STANLEY G. DRAGOTI, WARREN J. KRATKY, ARNOLD M. GRANT, TROY V. POST, EMILIO PUCCI, CATHERINE GIBSON, E. DONALD CHALLIS and WELLS, RICH, GREENE, INC.,

Defendants.

----------x

74 Civil 5081 (R.L.C.)

NOTICE OF APPEAL

NOTICE is hereby given that the above named plaintiff, Albert Kaufmann, hereby appeals to the United States Court of Appeals for the Second Circuit from the order of Judge Robert L. Carter denying the plaintiff's motion for a preliminary injunction entered in this action on December 5, 1974.

Dated: New York, New York
December 6, 1974

NEMSER & NEMSER

By _____
(Member of the Firm)

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TO:

CLERK OF THE COURT

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Wells, Rich, Greene, Inc., et al

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SERVICE OF THREE (3) COPIES OF THE WITHIN
JOINT APPENDIX - PART I VOLUME II
IS HEREBY ADMITTED.

DATED: January 6, 1975

Hughes Hubbard & Reed

Attorneys for Defendants-Appellees